

(25,949)

(25,950)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 500.

SEUFERT BROTHERS COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA AS TRUSTEE AND
GUARDIAN OF THE CONFEDERATED TRIBES AND
BANDS OF THE YAKIMA INDIANS AND NATIONS, AND
AS TRUSTEE AND GUARDIAN OF AND *EX REL.* SAM
WILLIAMS, AND SAM WILLIAMS.

No. 501.

THE UNITED STATES OF AMERICA AS TRUSTEE AND
GUARDIAN OF THE CONFEDERATED TRIBES AND
BANDS OF THE YAKIMA INDIANS AND NATIONS, AND
AS TRUSTEE AND GUARDIAN OF AND *EX REL.* SAM
WILLIAMS, AND SAM WILLIAMS, APPELLANTS,

vs.

SEUFERT BROTHERS COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF OREGON.

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1 THE UNITED STATES OF AMERICA,
District of Oregon, ss:

The President of the United States to the United States of America as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Indians and Nations and as Trustee and Guardian of and ex Rel. Sam Williams, and to said Sam Williams, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the city of Washington, within sixty days from the date of this writ, pursuant to an appeal duly allowed by the District Court for the District of Oregon and filed in the Clerk's office of said Court on the 30th day of January, 1917, in a cause wherein Seufert Brothers Company, a corporation, is Defendant and Appellant and you are Plaintiff and Appellee, to show cause, if any, why the Decree rendered against the said Appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Chas. E. Wolverton, United States District Judge for the District of Oregon, this 30th day of January, A. D. 1917.

CHAS. E. WOLVERTON,
District Judge for the District of Oregon.

Service of a copy of the within citation is hereby admitted this 30 day of January, A. D. 1917.

ROBERT R. RANKIN,
Attorney for Appellee.

2 UNITED STATES OF AMERICA,
District of Oregon, ss:

Good and sufficient service of the within citation upon the plaintiff, The United States of America at Portland Oregon this 30th day of January, 1917, is hereby accepted and acknowledged.

[Endorsed:] No. 6766. 19-277. In the District Court of the United States for the District of Oregon. United States of America, as Trustee, etc., and ex Rel. Sam Williams, Plaintiff, vs. Seufert Brothers Company, a corporation, Defendant. Citation to Appellee. U. S. District Court. Filed Jan. 30, 1917. G. H. Marsham. A. S. Bennett, Attorney and Solicitor for Defendant.

- 3 In the District Court of the United States for the District of Oregon, March Term, 1915.

Be it remembered, That on the 7th day of May, 1915, there was duly filed in the District Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:

- 4 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA ex Rel. SAM WILLIAMS, Plaintiff,

VS.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Bill of Complaint in Equity.

To the Honorable Judges of the District Court of the United States for the District of Oregon:

The United States of America, as trustee and guardian of all Indian wards of said United States, ex relatione of Sam Williams, by Robert R. Rankin, Assistant United States Attorney for the District of Oregon, pursuant to authority conferred upon him by the Attorney General of the United States, brings this, its Bill of Complaint, against the above named defendant, and for cause of suit against the defendant complains and alleges:

I.

That Sam Williams is a full blood Indian, born in the United States, is a member of the Yakima Nation of Indians and as such is allotted as number 1525, to certain lands within the boundaries of the Yakima Indian Reservation in the State of Washington, and is a ward of the United States Government, receiving protection from the United States and in the charge and under the control of the Superintendent of the Yakima Indian Reservation, and now resides on the Columbia River above the city of The Dalles, in the county of Wasco, State and District of Oregon.

II.

That the Seufert Brothers Company is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business in the city of The Dalles, county of Wasco, State and District of Oregon.

III.

That on the 9th day of June, 1855, articles of agreement and convention were made and concluded by and between the United States of America, acting through its agents and representatives thereunto duly authorized, with certain confederated tribes and bands of Indians, who for the purpose of this treaty are considered as one nation under the name Yakima, acting through their chiefs, head men and delegates thereunto duly authorized; this treaty was ratified by the Senate of the United States on March 8, 1859, and accepted and proclaimed by the President of the United States as the law of the land on April 18, 1859, which treaty thereby promised, guaranteed and secured to the members of the Yakima nation and their posterity and successors in interest, the right and privilege inter alia of taking fish out of usual and accustomed places along the Columbia River wherein the Indians of the confederated band and tribes of Indians mentioned in the treaty hunted and fished theretofore.

6

IV.

That each year, from time immemorial, the Indians of said confederated tribes and bands of the Yakima, were wont to visit certain usual and accustomed fishing places on the Columbia River for the purpose of catching food fishes for their immediate and future needs, and, among others, there was such usual and accustomed fishing places called by the Indian name "Little Lone Pine," or "Little Pine," or "Wasco Charley's Place," or "Sam William's Place," which is at the head of what is commonly called and known on the maps of the United States District Engineer Officer (said maps being on file in the District Engineer's Office in Portland, Oregon) as "Three Mile Rapids," on the south bank of the Columbia River between two and three miles above the city of The Dalles, in the State of Oregon.

This usual and accustomed Indian Fishing ground is more particularly described in accordance with the government survey, as follows, to wit:

That certain portion of the south bank of the Columbia River opposite lot number 3, in section 36, Township number 2, north of range 13, east of the Willamette meridian, in the county of Wasco, State of Oregon.

With the increased commercial fishing on the Columbia River, the places for the Indian fishing became very confined and narrowed in their limits and a particular fishing place now claimed by this plaintiff in the behalf and for the benefit of Sam Williams, an

Indian, is particularly described as follows, to wit:

7

"That certain point situated 28.53 chains north and 12 chains west of the quarter section corner between section 1, in township 1, and section 36 in township 2, both townships north of range 13 east of the Willamette Meridian in the county of Wasco, State and District of Oregon."

Said place is further identified as the usual place where Sam Williams, as a Yakima Indian, was accustomed to fish with dip net and fish scow wheel for several years last past and where this Indian has driven iron pins in the rocks to which to anchor his fish scow to the south bank of the Columbia River, and where the letter and figures "O 34" are marked on the rocks, the same being the number of the fishing license issued by the State of Oregon to Sam Williams for the fishing season of the year 1913.

This fishing place, as in this paragraph generally and particularly described, was, at the time of said treaty, always has been and now is, one of the usual and accustomed places to which Indians and one or more of the confederated tribes and bands of Indians of the Yakima nation have continually resorted for the purpose of securing fish and which place was secured for them for their use and benefit and which place said tribes and bands of Yakima and their Indian representatives have fished according to their custom except when prevented by high water, by the construction work of the United States Government in widening the channel of the Columbia River at this point, or by the threats and acts of the defendant company, its officers, agents and employees, as hereinafter particularly set forth and complained of.

8

V.

That from time immemorial there has been and now is, a usage and custom among the Indians of the Yakima nation, and of other Indian bands and tribes fishing in and along the Columbia River, which is well known and universally observed, as follows, to wit:

That any Indian of any of the tribes and bands of Indians fishing in and along the Columbia River, who desires to acquire any particular place for taking fish, might so acquire the exclusive rights and privileges to fish at a particular point by occupying and using the same, provided such use and occupation did not interfere with the rights of any other party who had acquired prior possession of said particular fishing place; that upon said prior acquisition, possession and use the particular fishing place became the actual property of its possessor, who thereupon had the exclusive right and privilege of fishing at said point until such time as the possessor thereof openly and notoriously abandoned the same, transferred it by sufferance to a member of his family, or another, or bequeathed the said rights and privileges away at his death;

That the above described custom and usage of acquiring and maintaining said fishing privileges and rights by priority of possession, has always existed upon the Columbia River and has not been confined alone to the Indians, but has been recognized and followed in the laws of the States of Oregon and particularly by "An Act to prohibit the establishment of fish traps in certain localities and to prescribe the location of certain fishing appliances on the Columbia River and its tributaries," which is the legislative declaration of said principles, and reads in part as follows, to wit:

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"It shall be unlawful for the Master Fish Warden of the Board of Fish Commissioners to grant a license to any person, firm, partnership or corporation, to build or set up fish traps or any other fixed fishing appliance, or drive piles therefor, in any locality in or on the Columbia River and its tributaries in this State, when in their judgment the same interferes with a prior right of fishing." Sec. 1, Chap. 128, 1913 Session Laws of Oregon.

VI.

That by reason of the custom and usage in acquiring fishing rights and privileges on the Columbia River, as described above in paragraph V of this bill, Sam Williams now and for many years last past has fished and still claims the right and privileges of taking fish from the place or point known as "Little Pine," or "Wasco Charley's Place," as generally and particularly described in paragraph IV of this Bill of Complaint. That Sam Williams fished at said "Wasco Charley's Place," as generally and particularly described in Paragraph IV hereof with a scow fish wheel, of which he was the owner and possessor in the year 1910, as well as in the year 1911, and the year 1912, which fishing was prior in point of time and interest to the fishing of any white man whatsoever, and particularly prior in point of time and prior in point of interest to the alleged fishing or any alleged rights pertaining thereto of the defendant company, or its officers, agents or employees.

VII.

That defendant company, by its officers, agents and employees, has, at the times and in the manner in this paragraph particularly set forth, interfered with and intentionally deprived Sam Williams, the Indian dependent of this plaintiff, of his rights and privileges, of taking fish from his usual and accustomed place for fishing as in paragraph IV herein described; said interference being by threats of damage and destruction to the property of Sam Williams, and said deprivation of fishing privileges being accompanied by use of actual force, violence and damage to the property of Sam Williams, and with the intention of forcing said Sam Williams to abandon his fishing place, that the same might be acquired for the use and benefit of the defendant company; that the times, occasions and means of said interference with and deprivation of fishing rights and privileges, owned and possessed by said Sam Williams are as follows, to wit:

First. During the month of May, 1913, one Frank A. Seufert, Jr., one Guy Whipple, one Hank Wickman and one Charley Switchler, employes of the defendant company came to the fishing place of said Sam Williams, as described in paragraph IV hereof and ordered and directed those in charge of the fishing scow owned by and belonging to Sam Williams to move said scow away from said fishing place; Sam Williams was absent and his employes refused to move said scow, whereupon the officers and employes of the defend-

ant company unloosened the cables and caused said fishing scow to drift into the current of the Columbia River, which is swift and dangerous at said point, and which carried the scow away and partially wrecked the same; that said act of defendant's officers and employes was done in the best part of the fishing season and

11 by said act Sam Williams was prevented from fishing for several days, to his great damage and injury.

Second. That on or about the 15th day of April, 1914, Sam Williams, in an attempt to claim possession and enjoy his fishing rights and privileges again anchored his fishing scow wheel to the rocks at the particular fishing place above described in paragraph IV and fastened and moored the scow to the iron post driven into said rocks during the previous fishing season by Sam Williams, for such purpose; that it was the intention and purpose of Sam Williams to engage in fishing at his usual and accustomed place for fishing on the 1st day of the fishing season, to wit, May 1, 1914, under license from the State of Oregon; that soon after said scow was moored at said fishing place, certain employes of the defendant company unfastened said scow from its moorings, turned said scow into the current of the river, from which it was rescued by the efforts of Sam Williams;

Third. That on or about the 29th day of April, 1914, said Sam Williams, in a further attempt to claim, possess and enjoy his fishing rights at said usual and accustomed fishing place, again moored said scow at said fishing place heretofore described; that the agents and employes of defendant, among them being Guy Whipple and Hank Wickman, acting under and by the authority of the defendant company herein, again came to said fishing place and ordered Sam Williams to remove said fish scow or they (as the agents and employes of the defendant company) would turn it loose; that plaintiff refused to remove said scow, whereupon said associates and employes of the defendant company untied the ropes attaching

12 said scow to the land and cut the wire, cables attached for the same purpose, and forced said scow into the current of the Columbia River, whereupon it drifted down said river, endangering the lives of the plaintiff and his men and damaging the scow which was brought to anchor only by the efforts of Sam Williams and his employes;

Fourth. That on or about the 3rd day of May, 1914, the said Sam Williams, in a further attempt to claim, possess and enjoy said fishing rights and privileges previously acquired at said usual and accustomed fishing place, placed and caused to be placed, certain steel or wire cables of considerable value to the iron post driven into the rocks at said point, as aforesaid, for the purpose of again anchoring his fishing scow to said rocks; that defendant company, by its officers, agents and employes, during the night of the said 3rd day of May, 1914, unfastened the cables of the said plaintiff and threw them in the said river, whereby the said cables were lost and never recovered, to the damage of said plaintiff; this interference occurred while the spring run of salmon was still at its best;

Fifth. That on or about the 4th day of May, 1914, said Sam

Williams, in a further attempt to claim, possess and enjoy said fishing rights and privileges at said usual and accustomed place, had worked said scow up the river from where it had drifted when turned loose by the defendant, as aforesaid, to a point just below said usual and accustomed fishing place for the purpose of anchoring said scow at the usual and accustomed fishing place as soon as new cables and ropes could be procured and attached to said iron post located as aforesaid;

13 said; that one F. A. Swufert, the president of said defendant company, one Hank Wickman, one Guy Whipple, and one Al Smith, together with several members and employees of said defendant company who are to the plaintiff unknown, went to the place on the south bank of the Columbia River where the fish scow of the Indian, Sam Williams, was anchored and under the directions and authority of said defendant company, said agents and employees of the defendant company unfastened the lines holding said fishing scow to the bank of the river, pulled up the anchors attached to said lines and holding the scow out of and away from the current of the river and turned said fishing scow adrift in the current of the Columbia river; that the current at that point is very swift and the scow was carried down the river from some distance and dashed against the rocks protruding from the waters of the river whereby said fishing scow was greatly damaged.

Sixth. That the defendant company, its officers, agents and employees have threatened on numerous occasions since the year, 1913, to cut said scow fish wheel of Sam Williams loose and set it adrift as soon as, and as often as said scow should be reanchored at said fishing point claimed, as aforesaid, by Sam Williams; that the threats of force made and the force executed by defendant company, its officers, agents and employees, together with the actual loss of property occasioned by the acts of said defendant company, its officers, agents and employees, together with the risk and danger of bodily harm by reason of said acts, made in each and all of the aforesaid instances of interference and oppression, have hindered and prevented Sam Williams from using and enjoying his prior, 14 ancient, usual and accustomed fishing rights and privileges at the hereinabove particularly described fishing point claimed and occupied by said Sam Williams.

Seventh. That on or about August 3, 1914, defendant company wilfully took and occupied the usual and accustomed fishing place of said Indian by anchoring the fish wheel scow belonging to said defendant company and bearing the state fishing license numbered "O-1," at the said generally and particularly described fishing place belonging to Sam Williams. Said scow occupied said point and was operated to the absolute and entire exclusion of all rights and privileges of said Indian, Sam Williams, and defendant company claimed said place as its place of fishing when said defendant company had never before operated a fishing scow wheel at said fishing place as designated in paragraph IV hereof.

Eighth. That during the month of March, 1915, Sam Williams again regularly applied to the proper officials for a state license to fish, as in previous years, at his usual and accustomed fishing place,

as hereinbefore described; that the defendant company, by its officers and agents, has entered a counterclaim and objections to the issuance of said license and has thereby prevented the issuance by the Fish and Game Commission of the State of Oregon or a license to Sam Williams to fish with a scow fish wheel at his usual and accustomed fishing place aforesaid.

Ninth. That during the month of April, 1915, the said defendant company constructed a stone and concrete wall forth-two (42) feet long, three (3) feet wide and varying from one (1) foot to five (5) feet in height along the fact of the river bank at low water and parallel with the river at the point where Sam Williams is accustomed to fish with his said scow fish wheel; that said wall was intended by said defendant company and does actually interfere with the fishing of Sam Williams at said usual and accustomed place when the water is high by preventing the body of the scow fish wheel from hanging over the bank and thereby allowing the wheel of said scow to hang into and work in the current of the river.

That all the above described acts of the defendant company, its officers, agents and employes, have deprived Sam Williams of the rights and privileges of fishing at his usual and accustomed fishing place described in paragraph IV above, and have been exercised against him, the said Sam Williams, over his protests and objections and against his will.

VIII.

That all the acts, claims and pretenses of said defendant company, its officers, agents and employes are contrary to equity and good conscience and tend to the manifest damage and oppression of the Indian, Sam Williams, and to the plaintiff herein, and the defendant company has deprived and will continue, unless prevented by this court, to deprive this Indian ward of the plaintiff of his ancient, usual and accustomed fishing rights claimed under the aforesaid treaty with the Yakima nation.

IX.

That Sam Williams has not, nor has any of his predecessors in interest, ever at any time sold, assigned, or in any manner transferred or conveyed his or their rights and privileges or any part thereof in and to the hunting and fishing at and in the usual and accustomed fishing place as described in paragraph IV herein to the defendant company or to anyone whomsoever, nor has said Indian, Sam Williams, in particular ever abandoned said place or his rights to fish therein.

X.

That the defendant company and the Indian, Sam Williams, were, on or about the 31st day of March, 1915, refused a license by the Fish and Game Commission of the State of Oregon, on the

grounds and for the reason that they did not wish to prejudice either party until such a time as a competent court had decided to which party license should be issued; that notwithstanding such action by the Fish and Game Commission of the State of Oregon, at the opening of the fishing season for the year 1915, to wit, the 1st day of May, 1915, at the hour of about three o'clock in the morning thereof, said defendant company, by its officers, agents and employes, and parties working for and under the direction and control of said defendant company, placed a fish wheel scow in the waters of the Columbia River at the fishing place heretofore in paragraph IV hereof, generally and particularly described, and at about the hour of one o'clock in the afternoon of said May 1, 1915, the fishing wheel of said scow was dropped into the waters of the Columbia River and the said scow, operated by the parties aforesaid, commenced fishing at said fishing place heretofore described and claimed the plaintiff in behalf of its Indian wards and by Sam Williams, a Yakima Indian, said fishing by said defendant being to the exclusion and deprivation of the ancient, usual and accustomed rights and privileges of the said Sam Williams.

- 17 That the spring run of salmon is of a superior quality of all other runs of salmon in the Columbia River and is the most valuable run of salmon for food and market purposes, and the spring run of salmon is now on and is unusually good; that each and every day the said Sam Williams is deprived of fishing at said point, he is irreparably damaged in an amount which cannot be determined since it is dependent on the amount of fish which said Sam Williams might catch at said point if permitted so to do; that the spring freshets will soon occur, during which the water is so high in the Columbia River that it is impossible to fish with and operate a fish wheel scow at said fishing place as in paragraph IV above described; that the defendant company is possessed of many fish wheel scows which can be located at many places upon both the Oregon and Washington sides of the Columbia River under state laws; that the Indian, Sam Williams, has but one fish wheel scow and claims but one fishing point and is in poor circumstances and dependent upon his fishing and rentals from lease of his allotted lands for a living.

XI.

That neither this plaintiff nor its Indian ward have any plain, speedy or adequate remedy at law and can have no adequate remedy in equity except in this court having jurisdiction thereof.

Wherefore, plaintiff prays for decree of this court as follows:

1. Establishing that the fishing place described in paragraph IV herein is one of the usual and accustomed fishing places of the Yakima nation of Indians, to which their rights and privileges of fishing were guaranteed by the treaty of 1855;
2. Establishing the rights and privileges of Sam Williams, as a member of the Yakima nation of Indians to fish at said place described in paragraph IV by reason of his priority in time and interest and by reason of said treaty rights and privileges;

3. That this Honorable Court will grant an order temporarily restraining said defendant, its officers, agents, deputies, servants, employes, and all persons under their control or under the control of either of them, and all persons acting by, through or under the authority or direction of said defendant, from in any manner whatsoever interfering with or depriving Sam Williams of his rights and privileges of fishing in said usual and accustomed fishing place;

4. That this Honorable Court will grant unto this plaintiff a restraining order conformable to the prayer of this bill of complaint and directed to said defendant, commanding it, on a certain day therein to be named, to be and appear before you then and there to show cause why an interlocutory injunction should not be granted restraining said defendant, its officers, deputies, servants, employes and all persons acting by, through or under the control of each or any of them from in any manner whatsoever interfering with or depriving Sam Williams of his rights and privileges of fishing at said usual and accustomed fishing place during the pendency of this action;

19 5. That upon final hearing hereof a decree be entered making such temporary or interlocutory injunction, or then making an injunction perpetual, and thereby perpetually enjoining said defendant, its officers, agents, deputies, servants and employes and all persons under their control or under the control of either or any of them and all persons acting by or under the authority or direction of the defendant, its officers, agents, or employes, from in any manner whatsoever interfering with or depriving Sam Williams of his rights and privileges of fishing in said usual and accustomed fishing place, as described in paragraph IV herein;

6. That it may please Your Honor to grant an order enjoining the defendant company, its officers, agents, or employes from maintaining the cement and stone wall described in the ninth subdivision of paragraph VII hereof and decreeing that the defendant company shall remove the same;

7. That the plaintiff may recover herein for its costs and disbursements;

8. That the plaintiff may have such other, further, and different relief as the nature of this cause may require and as to this Honorable Court may seem meet and just in equity.

UNITED STATES OF AMERICA, *Plaintiff.*

ROBERT R. RANKIN,
*Assistant United States Attorney
and Solicitor for Plaintiff.*

20 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, Robert R. Rankin, being first duly sworn, depose and say:

That I am a duly appointed, qualified and acting Assistant United States Attorney for the District of Oregon and that the facts set forth in the foregoing bill of complaint are true as I verily believe; that this verification is made on the facts within my personal knowledge

and made known to me by reports furnished by the duly authorized agents and officers of the Department of Interior, Commissioner of Indian Affairs.

ROBERT R. RANKIN.

Subscribed and sworn to before me this 6th day of May, 1915.

[NOTARIAL SEAL.]

JOHN J. BECKMAN,
Notary Public for Oregon.

Filed May 7, 1915. G. H. Marsh, Clerk.

21 And afterwards, to wit, on the 14th day of May, 1915, there was duly filed in said Court, a Motion to Dismiss the Bill of Complaint, in words and figures as follows, to wit:

22 In the District Court of the United States for the District of Oregon.

UNITED STATES ex Relatione SAM WILLIAMS, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Motion to Dismiss Complaint.

Comes now the defendant above named by its attorneys, R. R. Butler and Bennett & Galloway, and, under Rule 29 of the rules governing the practice in equity in the above entitled court, moves the Court for an order dissolving and vacating the temporary restraining order heretofore issued in this cause, and dismissing the suit of the plaintiff herein, on the ground and for the reason that said complaint does not contain sufficient facts to constitute a valid cause of action in equity against the defendant or to entitle the plaintiff to the relief prayed for or to any relief whatsoever.

R. R. BUTLER,
BENNETT & GALLOWAY,
Attorneys for Defendant.

STATE OF OREGON,
County of Multnomah,
District of Oregon, ss:

We, R. R. Butler, Francis V. Galloway and A. S. Bennett, hereby certify that we and each of us are regularly admitted to practice law in the State of Oregon, and in the United States Court for the District of Oregon, and that we have signed the foregoing motion to dismiss plaintiff's complaint, and that the same is made in good faith, and that we believe in sincerity and good faith that we are entitled to the order asked for in said motion.

R. R. BUTLER,
FRANCIS V. GALLOWAY,
A. S. BENNETT,
Attorneys for Defendant.

Filed May 14, 1915. G. H. Marsh, Clerk.

23 And afterwards, to wit, on Friday, the 14th day of May, 1915, the same being the 66th Judicial day of the Regular March Term of said Court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

24 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA

v.

SEUFERT BROTHERS COMPANY.

May 14, 1915.

Now, at this day, comes the plaintiff by Mr. Clarence L. Reames, United States Attorney and Mr. Robert R. Rankin, Assistant United States Attorney, and the defendant by Mr. A. S. Bennett, Mr. Francis V. Galloway and Mr. R. R. Butler, of counsel; whereupon this being the date fixed for the hearing upon the order for the defendant to show cause why a preliminary injunction should not issue herein, said defendant files herein a motion to dismiss the bill of complaint and thereupon this cause comes on to be heard upon the motion to dismiss the said bill and was argued by counsel; on consideration, it is ordered and adjudged that said motion be, and the same is hereby denied, with leave to present said motion at the close of the hearings upon said order to show cause; whereupon this cause comes on to be heard upon said order to show cause; and the court having heard the evidence adduced and the hour of adjournment having arrived the further hearing of this cause is continued until Monday, May 17, 1915.

25 And afterwards, to wit, on the 27th day of May, 1915, there was duly filed in said Court an Answer to the Bill of Complaint, in words and figures as follows, to wit:

26 In the District Court of the U. S. for the District of Oregon.

No. 6766.

U. S. OF AMERICA ex Rel. SAM WILLIAMS, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Answer to Complaint.

Comes now the defendant in the above entitled cause, and without wa-ving the manifest insufficiency of plaintiff's bill of complaint to

state a cause of action or suit, and insisting and relying upon such insufficiency and respectfully presenting said question of the sufficiency of the complaint to the court for adjudication, further answers the allegations of said Complaint:

I.

Answering paragraph I of said complaint, the defendant admits that Sam Williams is a full blooded Indian, born in the U. S., but denies that he is a member of the Yakima nation of Indians, denies any knowledge or information as to whether he is allotted lands within the boundaries of the Yakima Indian Reservation, or to whether his number is 1525.

Denies that said Sam Williams is a ward of the U. S. Government or receives protection from the U. S., or that he is under the charge or control of the superintendent of the Yakima Indian Reservation, but admits that he now resides on the Columbia River above the city of The Dalles, in the county of Wasco, and state of Oregon.

II.

Admits that the Seufert Brothers Company is a corporation, as alleged in paragraph II of said complaint.

III.

27 Answering paragraph III of said complaint, the defendant admits that on the 9th day of June, 1855, articles of agreement and convention were made by representatives of the U. S. with the Yakima Indians, as alleged in said complaint, and that said treaty was ratified on the 8th day of March, 1859, and accepted and proclaimed by the president on April 18, 1859, but denies that said treaty thereby or at all, promised, guaranteed, and secured to the members of the Yakima nation, or to their posterity and successors in interest, the right or privilege of taking fish out of usual or customary places along the Columbia river, except that defendant admits that the Yakima Indians reserved, by said treaty, the right and privilege for the members of its tribe, of taking fish at the usual and accustomed places in the streams running through the territory ceded to the U. S. by said treaty, and which places of fishing were within said territory, and defendant alleges that said territory was wholly and exclusively on the north side of the Columbia River, in the territory of Washington.

IV.

Answering paragraph IV of said complaint, the defendant admits that the Indians of said confederated tribe of Yakimas were wont to visit certain usual and accustomed fishing places, on the Columbia River, for the purpose of catching food fish for their immediate and future need, but denies that the place described in said complaint as

"Little Lone Pine," "Lone Pine," or "Wasco Charlie's Place," or "Sam Williams' Place," or at Three Mile Rapids on the south bank of the Columbia River, was such or any usual and accustomed fishing place for the Yakima Indians at the time of the execution of the said treaty, or ever or at all, and defendant denies any knowledge or information as to whether or not the place in question was known by the Indian names set forth in said complaint, or any of them at all.

And defendant denies that the place described as

28 "That certain portion of the south bank of the Columbia River opposite Lot number 3, in Section 36, Township # 2 North, of Range 13 East, of the Willamette meridian, in the county of Wasco, and state of Oregon,"

was a usual or accustomed Indian fishing ground by said Yakima Indians, or any Indians whatever, or that it ever has been such usual or accustomed fishing ground.

Denies that with the increased commercial fishing on the Columbia River, the places for the Indian fishing became very, or at all confined or narrowed in their limits, or that the place described as

"That certain point, situated 28.53 chains north, and 12 chains west of the quarter section corner, both section I, in Township I, and section 36 in Township 2, between townships north of range 13 east of the Willamette meridian, in the county of Wasco, and district of Oregon"

was an usual and accustomed place of such fishing, at the time of the making of said treaty or ever at all.

Denies that said place is further or at all identified as the usual place where Sam Williams, as a Yakima Indian, or at all, was accustomed to fish with dip-net or fish scow-wheel, for several or any years last past. Denies any knowledge or information as to whether said Indian has driven iron pins into the rocks at said point, at which to anchor his fish scow, or at all. Denies that said alleged fishing place, as described in the complaint or at all, was, at the time of said treaty, or ever has been, or now is, one of the usual and accustomed places, to which Indians of one or more of the confederated tribes or bands of Indians of the Yakima nation, or any Indians have continually resorted, for the purpose of securing fish, or that it was one of the places which was secured for them, or for their use or benefit by said treaty or at all, or that said tribes or bands of Yakima Indians, or their Indian representatives, or any representatives have fished there, according to their custom, or at all, except when prevented by high water, or by the construction work of the government, or by the threats or actions of the defendant, or its
29 officers, agents or employees.

V.

Answering paragraph V of said complaint, the defendant admits such a custom, as is alleged in said paragraph, among the Indians,

except that defendant denies that said custom in any case, extended beyond the territory of a particular band or tribe of Indians, or that the Indians of one tribe had any such right or custom to fish on the lands or country of another tribe, or that the Yakima Indians or any of their confederated bands had any such custom or right, on the south side of the Columbia River. Denies that said custom has been recognized or followed in the laws of the State of Oregon, or that the act of the legislature, referred to therein, was in recognition of any such custom.

VI.

Answering paragraph VI of said complaint, the defendant denies that Sam Williams, by reason of the custom or usage, or custom and usage, alleged in paragraph V of plaintiff's complaint, or at all, has now, or for many years, or any time past, fished from the point known as Little Pine, or Wasco Charlie's place, or described in paragraph IV of plaintiff's complaint, or that he ever has, prior to the filing of this complaint, claimed any such right or privilege under the treaty with the Yakima Indians, or as an accustomed fishing place.

Denies that Sam Williams fished at said Wasco Charlie's place, or at the place described in paragraph IV of the complaint, with a scow fish-wheel, in the year 1910, or in the year 1911, or in the year 1912, or that said alleged fishing was prior in point of time or interest to the fishing of any white man, or to the fishing of this defendant, or that it was prior in point of time, or in point of interest to the fishing or rights of the defendant's company, and to its agents and employees.

VII.

Answering paragraph VII of said complaint, the defendant denies that it, by its officers, agents, or employees, or at all, has, at the times, or in the manner set forth in paragraph VII of plaintiff's complaint, or at all, interfered with, or intentionally deprived said Sam Williams of his rights or privileges, or any right or privilege of taking fish from his usual and accustomed, or any place of fishing as described in paragraph IV of the complaint, or at all, and denies that said Sam Williams is an Indian dependent of the plaintiff, and denies that said alleged interference was by threats of damage or destruction, or that they ever made any such threats, or that said alleged deprivation of fishing privilege was accompanied by use of actual force or violence or damage to the property of Sam Williams, or with the intention of forcing said Sam Williams to abandon his fishing place, or that the same might be acquired for the use or benefit of the defendant's company, but admits that, at certain times, when the said Sam Williams had gone upon the defendant's lands, and tied his scow to said lands, far above the line of ordinary high water, the said defendant, by its employees, did unfasten the ropes fastened to stakes and pins upon the defendant's said lands, and de-

defendant admits that about the time alleged in May 13th, certain employes if the defendant did so unfasten and unloosen the ropes and cables, by which the said Williams was attempting a continuous trespass upon the defendant's lands, but denies that the current, at said time, partially, or at all, wrecked said scow, or that said Sam Williams was greatly or at all damaged or injured thereby.

31 Admits that about the month of May, 1913, the employes of the Defendant Company, unloosed the ropes fastening said scow to the shore, where said ropes were fastened on the land and premises of this defendant, and not otherwise, and denies that said scow was partially or at all wrecked. Denies that the same was done in the best part of the fishing season, or to the great or any damage or injury of said Sam Williams.

Denies that on or about the 15 day of April, 1914, or at any time in 1914, the said Sam Williams again or at all anchored his fishing scow-wheel to the rocks at the particular fishing place described in Paragraph IV or fastened or moored the same to any iron post driven into said rocks, by said Sam Williams, and admits that said scow was at that said time moored to the shore about 100 or 150 feet below said point and tied and fastened upon defendant's land, and admits that the defendant Company, by its employes, unfastened said fastenings on the land of the defendant, and not otherwise.

Denies that on or about the 28 day of April, 1914, said Sam Williams again moored said scow at said fishing place, but admits that he did, about that time, moor said scow at a point about 100 or 150 feet below the point in question, and trespassed upon the lands of the defendant, and fastened it as before upon the lands belonging to said defendant, and defendant admits that said employes of defendant untied the ropes where the same were fastened upon the lands of the defendant, and not otherwise, and denies that the defendant ordered its employes to cut any wire cables attached for that purpose or at all, or forced said scow into the current of the Columbia River. Admits that said scow drifted down said river, but denies that it endangered the lives of the plaintiff and his men, or damaged the scow.

32 Admits that on or about the 3 day of May, 1914, the said Sam Williams fastened certain iron cables to an iron post, opposite the point in question, and on the lands of the defendant, but denies that said cables were of considerable or any more than trifling value. Admits that the defendant unfastened the said cables, where they were upon its land, and threw them off from its land, but alleges that said cables were old, rusty, pieces of cable of trifling value, and that the placing of the same upon defendant's land by said Sam Williams was trespassing, and for the purpose of acquiring rights upon defendant's lands, and that defendant threw them off for the purpose of protecting his own rights, and not otherwise.

Defendant admits that on or about the 4 day of May, 1914, the said Sam Williams fastened his scow upon defendant's land at a point below the point in question, and that the said defendant unfastened the lines holding said scow, where the same were tied and

fastened upon the lands of the defendant and not otherwise, and denied that defendant pulled up the anchors attached to said lines, and denies that said scow was carried down the river and dashed against the rocks, or that it was washed against the rocks at all, or greatly or at all injured.

Denies that the defendant company, its officers, agents, or employees, have threatened on numerous or any occasion, since the year, 1913, to cut said scow fish-wheel of Sam Williams loose, or have hindered or prevented said Sam Williams from using or enjoying his prior, ancient, or usual or accustomed fishing rights or privileges, or any privileges or rights lawfully belonging to him at the point described or any point.

Admits that on or about August 3, 1914, defendant located his fish-wheel scow "0-1" at the fishing point described in plaintiff's complaint, but denies that said point was the usual or accustomed fishing place of Sam Williams, or that it belonged to Sam Williams, or that such fishing was to the entire exclusion of all or any rights or privileges of said Indian, and denies that said place was a place where said defendant Company had never operated a fishing scow wheel before, but alleges the truth to be in that regard that defendant had located its scow wheel in said point in April and May of 1914, but that early in said season it was broken and injured by some evil disposed person, so that the same floated away and was partially destroyed, and that defendant was unable to get it back there, or get another scow in its place until about August 3, 1914.

Defendant admits that it objected to the issuing of a license to said Sam Williams in 1915, upon the ground that it conflicted with the prior rights of the defendant, and upon the ground that it was within less than 950 feet of another wheel occupied and duly licensed to the defendant and its employees.

Admits the building of the wall at the point in question, substantially as alleged in plaintiff's complaint. Denies that said wall was intended by said defendant, or that it does interfere with the fishing of Sam Williams, and alleges that said wall was put there upon the land of the defendant for the purpose of improving said fishing point, and making it better so that the scow fish wheel could lie there with greater safety and convenience.

Denies that all the acts or any of the acts described in the Complaint, of defendant or its employees have deprived Sam Williams of any rights or privileges of fishing at the point in question, or that he had any rights or privileges of fishing there, or that it was his usual or accustomed fishing place.

34

VIII.

Denies that all or any of the acts, claims or pretenses of said defendant company, or its officers, agents or employees, are contrary to equity or good conscience, or tend to the manifest of any damage or oppression of the Indian Sam Williams, or to the plaintiff herein, or that the defendant company has deprived, or will continue to de-

prive, unless prevented by this court, this alleged Indian ward of the plaintiff, or the said Sam Williams, of his or any usual and accustomed fishing rights at the point in question, or at all.

IX.

Denies any knowledge or information as to whether or not said Sam Williams has or has not, or as to whether his predecessors in interest have or have not at any time sold assigned or conveyed his or their alleged rights or privileges, and denies again that said point in question was a usual or accustomed point of fishing of said Sam Williams or of said Indians, or that said Sam Williams or said Indians ever had any rights therein.

X.

Admits that at about the time in question the defendant company placed a fish wheel scow in the waters of the Columbia River at the fishing place described in Paragraph IV, and afterwards operated said scow; and denies that said fishing by the defendant was to the exclusion or deprivation of any ancient or usual or accustomed rights or privileges of the said Sam Williams.

Admits that the Spring run of Salmon was on at the commencement of this action, but denies that said Sam Williams is or was, irreparably, or at all damaged each and every day he was deprived of fishing at said point, or that he had been damaged at all by any act of the defendant, in relation thereto.

35 Denies that the run of Salmon is or was unusually good, or that it was good at said point at all. Denies that the Indian, Sam Williams, has or claims but one fishing point or that he is in poor circumstances, or dependent upon his fishing for a living.

XI.

Denies that the plaintiff and the said Sam Williams have no plain, speedy, or adequate remedy at law, or that they or each of them have no adequate remedy in equity, excepting in this court, or that this court has any jurisdiction thereof.

And for a further and separate affirmative answer, the defendant alleges:

I.

That the Sam Williams, mentioned in plaintiff's complaint, is a Cowlitz Indian, born in the Cowlitz tribe of a Cowlitz mother, and has never, in any way, become a member of the Yakima Indian tribe, and had never resided upon the Yakima Indian Reservation, and that he is, and long has been a citizen of the U. S., enjoying all the rights of citizenship, and that he has resided in the state of Oregon for more than 21 years, and has taken, and is now living upon a homestead in said state of Oregon, and that his relations

with all Indian tribes has been entirely severed, and that he is in no sense a ward of the U. S. Government, and defendant further alleges that the Government of the U. S., or the district attorney for said Government have no right or authority to bring this action and that they are not the parties in interest in this case, or in any way interested therein.

36

II.

Defendant further alleges that it is the owner in fee simple of lot 3, in section 36, township 2 N. of range 13 E., of the Willamette Meridian, and lots one and two of section one, in township one N., 13 E., and that said lots lie along the Columbia River at the point in question, and extend to the ordinary high water of said river and cover the point in dispute and the point where the Indian Sam Williams, was attempting to fasten the lines of his scow wheel at the times complained of in the Complaint, and that said fastenings of said ropes and cables upon the lands of the defendant, were a willful trespass.

That the scow wheel of the said Indian, Sam Williams, was a permanent structure, and that the placing of it in front of and against the shore of the defendant, permanently shut off the access of said defendant to and from the shore and the water, and was a permanent obstruction of the right of the defendant to pass with its employes back and forth from the shore to the water, and did entirely prevent the defendant from exercising its right of fishing either for Salmon or any other fish, either with wheels or with ordinary fishing tackle, or in any other way along the shore.

III.

Defendant further alleges that the right of fishing exercised by the Yakima Indians, in 1855 (where they had any rights of fishing at all) were not by means of permanent structures, like fish wheels or fish scows, but were exercised by hand, by the spear, and dip-net, and in other simple and primitive ways. That fishing by fish wheels and scows and other permanent structures were, at that time, unknown both to the Indians and Whites, and were not in the contemplation of the parties at the time of the execution and ratifi-

37 cation of said treaty. That the fishing with such permanent structures as were bying used by the Indian, Sam Williams, and as are being attempted to be enforced in this action are permanent and exclusive in their nature, and cannot be exercised by the Indians in common with the white citizens of the territory as provided in said treaty, and that said Indian, Sam Williams, has never desired to fish or offered or attempted to fish at the point in question in any of the primitive ways contemplated by said treaty, but that, on the contrary, he has attempted and desired to place a permanent structure in front of the defendant's shore, exclusive in its nature, and which would entirely prevent the defendant from fishing at that point, and to operate the same with a force of men, some of

whom are white men, for the purpose of commercial fishing and sell the fish at the white men's canneries on a large scale, and that said fishing is not within any rights belonging to the Yakima Indians, even if they had, otherwise, a right of fishing at the point in question.

IV.

The Defendant further alleges that at time of the treaty in question, the Yakima Indians and their confederated tribes, claimed and occupied the lands on the north shore of the Columbia river in the territory of Washington, and did not claim or occupy any land on the south shore of the said Columbia river, but that their boundaries stopped at the center channel of the Columbia River, and did not cover the point in question.

That at said time, the lands on the south shore of the Columbia river, and covering the point in question, were claimed and occupied by certain other tribes of Indians, living in the country known as "Middle Oregon," and that during the same year and about the same time of the execution of the treaty with the Yakima Indians, under which Sam Williams now claims, the U. S. negotiated with
 38 the said "Middle Oregon" Indians, another treaty, in relation to the land claimed and occupied by them on the south shore of the Columbia River, and extended to the middle channel of said river, and that said treaties were ratified, by the Senate of the U. S. on the same day and year, and proclaimed by the President on the same day, and should be construed together.

That in said treaties, the land on the north shore was recognized as being claimed and occupied by the Yakima Indians, and that on the south shore claimed and occupied by Oregon Indians, and that similar rights were recognized and reserved to each tribe respectively, as to fishing in the territory claimed, occupied and ceded by it.

That by the plain implication of said treaties, the rights of fishing reserved to the Yakimas were entirely within their own territory on the north side of the river, and the rights reserved to the Middle Oregon Indians were entirely on their own territory on the Oregon side, and that, thereafter, by a treaty with the Middle Oregon Indians, the right of Indian fishing upon that side of the river was entirely withdrawn and extinguished, and the lands along the shore of the Columbia on the Oregon side, were afterwards conveyed by the government of the U. S. to the defendant and its predecessors and interests, free from any Indian fishing rights whatever, except the right which they might maintain under the general laws, the same as any other citizen of the U. S.

V.

And defendant further alleges that during the years 1913, 1914, and 1915, and long prior thereto, the defendant had a license and was operating through its agents and employes, a fish wheel on the
 39 point in question, about 750 feet above the point in dispute, and that the laws of Oregon provide that no fish wheel, or fishing scow can be licensed or operated within 900 feet of a

wheel or scow already licensed or operated, and that the attempt of the said Sam Williams to locate or operate his fishing scow, or to obtain a license therefor, without the consent of the defendant, was contrary to said laws, and was unlawful and interfered with the rights of said defendant.

Wherefore and in order to protect its prior right of fishing, and in order to protect its ownership at the point in question, and to prevent trespass thereon, and to prevent the said Sam Williams from acquiring rights by the statute of limitations, the defendant did, at the times in question, perform such of the acts set forth in the Complaint as are hereinbefore admitted and not otherwise.

Wherefore Defendant prays that this cause be dismissed, and that it go hence without day and have judgment for its costs and disbursements made and expended herein.

A. S. BENNETT,
R. R. BUTLER,
By FRANCIS V. GALLOWAY,
FRANCIS V. GALLOWAY,
Attorneys for Defendant.

40 STATE OF OREGON,
County of Wasco, ss:

I, F. A. Seufert being duly sworn, depose and say that I am the President of defendant corporation, above named, and the Managing Officer thereof, and that the foregoing answer is true as I verily believe.

F. A. SEUFERT.

Subscribed and sworn to before me this 26th day of May 1915.

FRANCIS V. GALLOWAY, [SEAL.]
Notary Public for Oregon.

My commission expires August 8, 1915.

STATE OF OREGON,
County of Wasco, ss:

I, Francis V. Galloway, being duly sworn say that I am one of the attorneys for the Defendant above named and that I served the foregoing answer upon R. R. Rankin, attorney for Plaintiff by depositing in the U. S. Post office at The Dalles, Oregon on the 26th day of May 1915 a copy of the foregoing answer prepared and certified to by me as one of Defendant's attorneys, which said copy of answer was securely enclosed in an envelop with the postage thereon fully prepaid and plainly addressed as follows:

Hon. R. R. Rankin,
U. S. District Attorney,
Portland, Oregon

and I further swear that there is a communication by U. S. mail between The Dalles, Oregon, and Portland, Oregon.

FRANCIS V. GALLOWAY.

Subscribed and sworn to before me this 26th day of May 1915.

[NOTARIAL SEAL.]

PAUL W. CHILDERS,
Notary Public for Oregon.

My commission expires Nov. 11, 1916.

Filed May 27, 1915. G. H. Marsh, Clerk.

41 And afterwards, to wit, on the 23rd day of June, 1915, there was duly filed in said Court, an Amended Bill of Complaint, in words and figures as follows, to wit:

42 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Silliams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Amended Bill of Complaint in Equity.

To the Honorable Judges of the District Court of the United States for the District of Oregon:

The United States of America, by Robert R. Rankin, Assistant United States Attorney for the District of Oregon, pursuant to authority conferred upon him by the Attorney General of the United States, permission of the Court having been first obtained, brings this its amended Bill of Complaint, against the above named defendant, and for cause of suit against the defendant complains and alleges:

I.

That the United States is the guardian of the confederated tribes and bands of Indians known as the Yakima Nation, as well as all the individual members thereof, and is the trustee of the
43 allotted lands of said Indians, and is the guardian and trustee of all the rights and privileges reserved to said Yakima Indians by the hereinafter mentioned treaty with the Yakima Nation.

That as such guardian and trustee the United States of America brings this suit and protects the Indians of said Yakima Nation in the rights and privileges guaranteed to them by said treaty, to fish at their usual and accustomed places in and along the Columbia

River, and particularly to protect the rights and privileges of Sam Williams, as a member of said Yakima Nation, who has for some time heretofore most constantly and most recently used, possessed and occupied the hereinafter described fishing place as such a usual and accustomed fishing place of the Yakima Nation.

II.

That Sam Williams is a full blood Indian, born in the United States, is a member of the Yakima Nation of Indians and as such is allotted as number 1525, to certain lands within the boundaries of the Yakima Indian Reservation in the State of Washington, and is a ward of the United States Government, receiving protection from the United States and in the charge and under the control of the superintendent of the Yakima Indian Reservation, and now resides and for over ten years last past has resided, on the Columbia River above the city of The Dalles, in the county of Wasco, State and District of Oregon.

III.

That the Seufert Brothers Company is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business
44 in the city of The Dalles, county of Wasco, State and District of Oregon.

IV.

That on the 9th day of June, 1855, articles of agreement and convention were made and concluded by and between the United States of America, acting through its agents and representatives thereunto duly authorized, with certain confederated tribes and bands of Indians, who for the purpose of this treaty are considered as one nation under the name "Yakima," acting through their chiefs, head men and delegates thereunto duly authorized; this treaty was ratified by the Senate of the United States on March 8, 1859, and accepted and proclaimed by the President of the United States as the law of the land on April 18, 1859, which treaty thereby promised, guaranteed and secured to the members of the Yakima Nation and their posterity and successors in interest, the right and privilege inter alia of taking fish out of usual and accustomed places along the Columbia River wherein the Indians of the confederated band and tribes of Indians mentioned in the treaty hunted and fished theretofore.

V.

That each year, from time immemorial, the Indians of said confederated tribes and bands of the Yakima, were wont to visit certain usual and accustomed fishing places on the Columbia River for the purpose of catching food fishes for their immediate and future

needs, and, among others, there was such usual and accustomed fishing place called by the Indian Name, "Lone Tree," or "Lone Pine," or "Little Pine," or "Wasco Charley's Place," or "Sam Williams' Place," which is at the head of what is commonly called and known on the maps of the United States District Engineer Officer (said maps being on file in the District Engineer's office in Portland, Oregon) as "Three Mile Rapids," on the south bank of the Columbia River between two and three miles above the City of The Dalles, in the County of Wasco, in the State of Oregon.

This usual and accustomed Indian Fishing Ground is more particularly described in accordance with the government survey, as follows, to-wit:

That certain portion of the rocks which, at low water, constitute the south bank of the Columbia River opposite lot number 3, in section 36, township number 2, north of range 13, east of the Willamette meridian, in the county of Wasco, State of Oregon.

With the increased commercial fishing on the Columbia River, the places for the Indian fishing became very confined and narrowed in their limits and a particular fishing place now claimed by this plaintiff in the behalf and for the benefit of the Yakima Nation of Indians and the most recent and consistent user, Sam Williams, is particularly described as follows, to-wit:

That certain point situate 28.53 chains north and 12 chains west of the quarter section corner between section 1, in township 1, and Section 36 in township 2, both townships north of range 13 east of the Willamette meridian in the county of Wasco, State and District of Oregon.

Said place is further identified as the usual place where Sam Williams, as a Yakima Indian, was accustomed to fish with dip net and fish scow wheel for several years last past and where this Indian has driven iron pins in the rocks to which to anchor his scow fish wheel to the south bank of the Columbia River, and where the letter and figures "O 34" are marked on the rocks, the same being the number of the fishing license issued by the State of Oregon to Sam Williams for the fishing season of the year 1913.

This fishing place, as in this paragraph generally and particularly described, was, at the time of said treaty, always has been and now is, one of the usual and accustomed places to which Indians belonging to one or more of the confederated tribes and bands of Indians of the Yakima Nation, have continually resorted for the purpose of securing fish and which place was secured to them for their use and benefit and which place said tribes and bands of Yakima and their Indian representative have fished according to their customs and by more civilized methods except when prevented by high water, by the construction work of the United States Government in widening the channel of the Columbia River at this point, or by the threats and acts of the defendant company, its officers, agents and employees, as hereinafter particularly set forth and complained of.

VI.

That from time immemorial there has been and now is, a usage and custom among the Indians of the Yakima Nation, and of other Indian bands and tribes fishing in and along the Columbia River, which is well known and universally observed, as follows, towit:

That any Indian of any of the tribes and bands of Indians fishing in and along the Columbia River, who desires to acquire any particular place for taking fish, might so acquire the exclusive rights and privileges to fish at a particular point by occupying and using the same, provided such use and occupation did not interfere with the rights of any other party who had acquired prior possession of said particular fishing place; that upon said prior acquisition, possession and use the particular fishing place became the actual property of its possessor, who thereupon had the exclusive right and privilege of fishing at said point until such time as the possessor thereof openly and notoriously abandoned the same, transferred it by sufferance to a member of his family, or another, or bequeathed the said rights and privileges away at his death;

That the above described custom and usage of acquiring and maintaining said fishing privileges and rights by priority of possession, has always existed upon the Columbia River and has not been confined alone to the Indians, but has been recognized and followed in the laws of the State of Oregon and particularly by "An Act to prohibit the establishment of fish traps in certain localities and to prescribe the locations of certain fishing appliances on the Columbia River and its tributaries," and reads in part as follows, towit:

"It shall be unlawful for the Master Fish Warden or the Board of Fish Commissioners to grant a license to any person, firm, partnership or corporation, to build or set up fish traps or any other fixed fishing appliance, or drive piles therefor, in any locality in or on the Columbia River and its tributaries in this State, when in their judgment the same interferes with a prior right of fishing." Sec. 1, Chap. 128, 1913 Session Laws of Oregon. P. 225.

VII.

That by reason of the custom and usage in acquiring fishing rights and privileges in and along the Columbia River at the point in question as described in paragraph V of this bill and by reason of the governmental protection guaranteed to the Yakima Indians as alleged in paragraph VI of this bill, Sam Williams, now and for many years last past has fished and still claims the right and privilege of taking fish from the place known as, "Lone Tree," or "Sam Williams' Place," as generally and particularly described in paragraph V herein, with Indian means and methods, during the years 1906, 1907 and 1908; Sam Williams fished at said "Lone Tree" point with a scow fish wheel, of which he was the owner and possessor, during the fishing season of the years 1910 and 1911, which was the first fishing season and year

that a scow fish wheel could be successfully operated at said fishing place; that said scow fish wheel was operated during said fishing season of 1910 and 1911 under a scow fish wheel license issued by the State of Oregon to Sam Williams on April 30, 1910, and numbered, "0-27"; that a scow fish wheel was again operated by Sam Williams at said fishing place during the fishing season and years of 1911 and 1912 under a scow fish wheel license issued by the State of Oregon to Sam Williams and Peter Jackson, a copartnership, on the 8th day of May, 1911, and numbered "0-27"; that a scow fish wheel was again operated by Sam Williams at said fishing place during the fishing season of the years 1912 and 1913, under a scow fish wheel license issued by the State of Oregon to Sam Williams on the 16th day of August, 1912, and numbered, "0-31"; that a scow fish wheel was again operated by Sam Williams at said fishing place during the fishing season of the years 1913 and 1914 under a scow fish wheel license issued by the State of Oregon to Sam Williams on the 12th day of May, 1913, and numbered "0-34"; that Sam Williams, during the fishing season of 1914 and 1915 attempted to operate a scow fish wheel at said fishing place under a scow fish wheel license issued by the State of Oregon to Sam Williams on the 1st day of April, 1914, and numbered "0-26," but was prevented from so doing by the hereinafter alleged wrongful act of the defendant company.

That the fishing rights so claimed and exercised were a portion of those fishing rights and privileges guaranteed by the Yakima treaty aforesaid, and were prior in point of time and interest to the alleged fishing rights of any white man or company or corporation whatsoever, and were particularly prior in point of time and interest to the alleged fishing or any alleged rights pertaining thereto, claimed by the defendant company, its officers, agents or employees.

VIII.

That the defendant company, by its officers, agents and employees, has, at the times and in the manner in this paragraph particularly set forth, interfered with and intentionally deprived Sam Williams, the Indian dependent of this plaintiff, of his rights and privileges, of taking fish from his usual and accustomed place for fishing as in paragraph V herein described; said interference being by threats of damage and destruction to the property of Sam Williams, and said deprivation of fishing privileges being accompanied by use of actual force, violence and damage to the property of Sam Williams, and with the intention of forcing said Sam Williams to abandon his fishing place, that the same might be acquired for the use and benefit of the defendant company; that the times, occasions and means of said interference with and deprivation of fishing rights and privileges, owned and possessed by said Sam Williams are as follows, to-wit:

First. During the month of May, 1913, one Frank A. Seufert, Jr., one Guy Whipple, one Hank Wickman and one Charley Switchler, employes of the defendant company came to the fishing

place of said Sam Williams, as described in paragraph V hereof and ordered and directed those in charge of the fishing scow owned by and belonging to Sam Williams to move said scow away from said fishing place; Sam Williams was absent and his employes refused to move said scow, whereupon the officers and employes of the defendant company unloosened the cables and caused said fishing scow to drift into the current of the Columbia River, which is swift and dangerous at said point, and which carried the scow away and partially wrecked the same; that said act of defendant's officers and employes was done in the best part of the fishing season and by said act Sam Williams was prevented from fishing for several days, to his great damage and injury.

Second. That on or about the 15th day of April, 1914, Sam Williams, in an attempt to claim possession and enjoy his fishing rights and privileges again anchored his fishing scow wheel to the rocks at the particular fishing place above described in paragraph V and fastened and moored the scow to the iron post driven into said rocks during the previous fishing season by Sam Williams, for such purpose; that it was the intention and purpose of Sam Williams to engage in fishing at his usual and accustomed place for fishing on the 1st day of the fishing season, to wit, May 1, 1914, under
51 license from the State of Oregon; that soon after said scow was moored at said fishing place, certain employes of the defendant company unfastened said scow from its moorings, turned said scow into the current of the river, from which it was rescued by the efforts of Sam Williams;

Third. That on or about the 29th day of April, 1914, said Sam Williams, in a further attempt to claim, possess and enjoy his fishing rights at said usual and accustomed fishing place, again moored said scow at said fishing place heretofore described; that the agents and employes of defendant, among them being Guy Whipple and Hank Wickman, acting under and by the authority of the defendant company herein, again came to said fishing place and ordered Sam Williams to remove said fish scow or they (as the agents and employes of the defendant company) would turn it loose; that plaintiff refused to remove said scow, whereupon said associates and employes of the defendant company untied the ropes attaching said scow to the land and cut the wire cables attached for the same purpose, and forced said scow into the current of the Columbia River, whereupon it drifted down said river, endangering the lives of the plaintiff and his men and damaging the scow which was brought to anchor only by the efforts of Sam Williams and his employes:

Fourth. That on or about the 3rd day of May, 1914, the said Sam Williams, in a further attempt to claim, possess and enjoy said fishing rights and privileges previously acquired at said usual and accustomed fishing place, placed and caused to be placed, certain steel or wire cables of considerable value to the iron post driven
52 into the rocks at said point, as aforesaid, for the purpose of again anchoring his fishing scow to said rocks; that defendant company by its officers, agents and employes, during the night of the said 3rd day of May, 1914, unfastened the cables of the

said plaintiff and threw them in the said river, whereby the said cables were lost and never recovered, to the damage of said plaintiff; this interference occurred while the spring run of salmon was still at its best;

Fifth. That on or about the 4th day of May, 1914, said Sam Williams, in a further attempt to claim, possess and enjoy said fishing rights and privileges at said usual and accustomed place, had worked said scow up the river from where it had drifted when turned loose by the defendant, as aforesaid, to a point just below said usual and accustomed fishing place for the purpose of anchoring said scow at the usual and accustomed fishing place as soon as new cables and ropes could be procured and attached to said iron post located as aforesaid; that one F. A. Seufert, the president of said defendant company, one Hank Wickman, one Guy Whipple, and one Al Smith, together with several members and employes of said defendant company who are to the plaintiff unknown, went to the place on the south bank of the Columbia River where the fish scow of the Indian, Sam Williams, was anchored and under the directions and authority of said defendant company, said agents and employes of the defendant company unfastened the lines holding said fishing scow to the bank of the river, pulled up the anchors attached to said lines and holding the scow out of and away from the current of the river and turned said fishing scow adrift in the current of the Columbia river; that the current at that point is very swift and the scow was carried down the river for some distance and dashed
53 against the rocks protruding from the waters of the river whereby said fishing scow was greatly damaged.

Sixth. That the defendant company, its officers, agents and employes have threatened on numerous occasions since the year 1913, to cut said scow fish wheel of Sam Williams loose and set it adrift as soon as, and as often as said scow should be reanchored at said fishing point claimed, as aforesaid, by Sam Williams; that the threats of force made and the force executed by defendant company, its officers, agents and employes, together with the actual loss of property occasioned by the acts of said defendant company, its officers, agents and employes, together with the risk and danger of bodily harm by reason of said acts, made in each and all of the aforesaid instances of interference and oppression, have hindered and prevented Sam Williams from using and enjoying his prior, ancient, usual and accustomed fishing rights and privileges at the hereinabove particularly described fishing point claimed and occupied by said Sam Williams.

Seventh. That on or about August 3, 1914, defendant company wilfully took and occupied the usual and accustomed fishing place of said Indian, by anchoring the fish wheel scow belonging to said defendant company and bearing the state fishing license numbered "O-1", issued on April 1, 1914, at the said generally and particularly described fishing place belonging to Sam Williams. Said scow occupied said point and was operated to the absolute and entire exclusion of all rights and privileges of said Indian, Sam Williams, and defendant company claimed said place as its place of fishing

54 when said defendant company had never before operated a fishing scow wheel at said fishing place, as designated in paragraph V hereof;

Eighth. That during the month of March, 1915, Sam Williams again regularly applied to the proper officials for a state license to fish, as in previous years, at his usual and accustomed fishing place, as hereinbefore described; that the defendant company, by its officers and agents, has entered a counterclaim and objections to the issuance of said license and has thereby prevented the issuance by the Fish and Game Commission of the State of Oregon of a license to Sam Williams to fish with a scow fish wheel at his usual and accustomed fishing place aforesaid.

Ninth. That during the month of April, 1915, the said defendant company constructed a stone and concrete wall forty two (42) feet long, three (3) feet wide and varying from one (1) foot to five (5) feet in height along the face of the river bank at low water and parallel with the river at the point where Sam Williams is accustomed to fish with his said scow fish wheel; that said wall was intended by said defendant company and does actually interfere with the fishing of Sam Williams at said usual and accustomed place when the water is high by preventing the body of the scow fish wheel from hanging over the bank and thereby allowing the wheel of said scow to hang into and work in the current of the river.

That all the above described acts of the defendant company, its officers, agents and employes, have deprived Sam Williams of the rights and privileges of fishing at his usual and accustomed fishing place described in paragraph V above, and have been exercised against him, the said Sam Williams, over his protests and objections and against his will.

55

IX.

That the defendant company and the Indian, Sam Williams, were, on or about the 31st day of March, 1915, refused a license by the Fish and Game Commission of the State of Oregon, on the grounds and for the reason that they did not wish to prejudice either party until such a time as a competent court had decided to which party license should be issued; that notwithstanding such action by the Fish and Game Commission of the State of Oregon, at the opening of the fishing season for the year 1915, to wit, the 1st day of May, 1915, at the hour of about three o'clock in the morning thereof, said defendant company, by its officers, agents and employes, and parties working for and under the direction and control of said defendant company, placed a fish wheel scow in the waters of the Columbia River at the fishing place heretofore in paragraph V hereof, generally and particularly described, and at about the hour of one o'clock in the afternoon of said May 1, 1915, the fishing wheel of said scow was dropped into the waters of the Columbia River and the said scow, operated by the parties aforesaid, commenced fishing at said fishing place heretofore described and claimed by the plaintiff in behalf of its Indian wards and by Sam Williams,

a Yakima Indian, said fishing by said defendant being to the exclusion and deprivation of the ancient, usual and accustomed rights and privileges of the said Sam Williams.

That the spring run of salmon is of a superior quality of all other runs of salmon in the Columbia River and is the most valuable run of salmon for food and market purposes, and the spring run of salmon is now on and is unusually good; that each and every
56 day the said Sam Williams is deprived of fishing at said point, he is irreparably damaged in an amount which cannot be determined since it is dependent on the amount of fish which said Sam Williams might catch at said point if permitted so to do; that the spring freshets will soon occur, during which the water is so high in the Columbia River that it is impossible to fish with and operate a fish wheel scow at said fishing place as in paragraph V above described; that the defendant company is possessed of many fish wheel scows which can be located at *many fish wheel scows which can be located at* many places upon both the Oregon and Washington sides of the Columbia River under state laws; that the Indian, Sam Williams, has but one fish wheel scow and claims but one fishing point and is in poor circumstances and dependent upon his fishing and rentals from the lease or sales of his allotted lands, for a living.

X.

That Sam Williams has not, nor has any of his predecessors in interest, ever at any time sold, assigned, or in any manner transferred or conveyed his or their rights and privileges or any part thereof in and to the hunting and fishing at and in the usual and accustomed fishing place as described in paragraph V herein to the defendant company or to anyone whomsoever, nor has said Indian, Sam Williams, in particular ever abandoned said place or his rights to fish therein, nor has the United States ever in any manner limited or disposed of the fishing rights of the Yakima Nation as reserved in said treaty.

57

XI.

That all the acts, claims and pretenses of said defendant company, its officers, agents and employes are contrary to equity and good conscience and tend to the manifest damage and oppression of the confederated bands and tribes of Indians known as the Yakima and to the Indian, Sam Williams, and to the plaintiff herein and the defendant company has deprived and will continue, unless prevented by this court, to deprive the Yakima Indian and this particular Indian ward of the plaintiff of his and their ancient, usual and accustomed fishing rights claims under the aforesaid treaty between the Yakima nation and the United States.

XII.

That neither this plaintiff nor its Indian ward have any plain, speedy or adequate remedy at law and can have no adequate remedy in equity except in this court having jurisdiction thereof.

Wherefore, plaintiff prays for decree of this court as follows:

1. Establishing that the fishing place described in paragraph V. herein is one of the usual and accustomed fishing places of the Yakima Nation of Indians, to which their rights and privileges of fishing were guaranteed by the treaty of 1855;

2. Establishing the rights and privileges of Sam Williams, as a member of the Yakima Nation of Indians to fish at said place described in paragraph V by reason of his priority in time and interest and by reason of said treaty rights and privileges;

58 3. That this Honorable Court will grant an order temporarily restraining said defendant, its officers, agents deputies, servants, employes, and all persons under their control or under the control of either of them, and all persons acting by, through or under the authority or direction of said defendant, from in any manner whatsoever interfering with or depriving Sam Williams of his rights and privileges of fishing in said usual and accustomed fishing place;

4. That this Honorable Court will grant unto this plaintiff a restraining order conformable to the prayer of this bill of complaint and directed to said defendant, commanding it, on a certain day therein to be named, to be and appear before you then and there to show cause why an interlocutory injunction should not be granted restraining said defendant, its officers, deputies, servants, employes and all persons acting by, through or under the control of each or any of them from in any manner whatsoever interfering with or depriving Sam Williams of his rights and privileges of fishing at said usual and accustomed fishing place during the pendency of this action;

5. That upon final hearing hereof a decree be entered making such temporary or interlocutory injunction, or then making an injunction perpetual, and thereby perpetually enjoining said defendant, its officers, agents, deputies, servants and employes and all persons under their control or under the control of either or any of them and all persons acting by or under the authority or direction of the defendant, its officers, agents, or employes, from in any manner whatsoever interfering with or depriving Sam Williams of
59 his rights and privileges of fishing in said usual and accustomed fishing place, as described in paragraph V herein;

6. That it may please Your Honor to grant an order enjoining the defendant company, its officers, agents, or employes from maintaining the cement and stone wall described in the ninth subdivision of paragraph VIII hereof and decreeing that the defendant company shall remove the same;

7. That the plaintiff may recover herein for its costs and disbursements;

8. That the plaintiff may have such other, further, and different

relief as the nature of this cause may require and as to this Honorable Court may seem meet and just in equity.

UNITED STATES,
Plaintiff.

ROBERT R. RANKIN,
*Assistant United States Attorney
and Solicitor for Plaintiff.*

60 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, Robert R. Rankin, being first duly sworn, depose and say:

That I am a duly appointed, qualified and acting Assistant United States Attorney for the District of Oregon, and that the facts set forth in the foregoing bill of complaint are true as I verily believe; that this verification is made on the facts within my personal knowledge and made known to me by reports furnished by the duly authorized agents and officers of the Department of Interior, Commissioner of Indian Affairs.

ROBERT R. RANKIN.

Subscribed and sworn to before me this 23rd day of June, 1915.

[SEAL.]

EVERETT A. JOHNSON,
Notary Public for Oregon.

My commission expires on the 8 day of Aug., 1916.

61 UNITED STATES OF AMERICA,
District of Oregon, ss:

Due and legal service of the above named Bill of Complaint, in the above entitled cause, is hereby acknowledged by means of a copy duly certified to as such, this 23rd day of June, A. D. 1915.

FRANCIS V. GALLOWAY,
Of Solicitors for Defendant.

Filed June 23, 1915. G. H. Marsh, Clerk.

62 And afterwards, to wit, on the 2nd day of July, 1915, there was duly filed in said Court, a Motion to Dismiss the Amended Bill of Complaint, in words and figures as follows, to wit:

63 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

VS.

SEUFERT BROTHERS COMPANY, a Corporation.

Motion to Dismiss Amended Bill of Complaint.

Comes now the defendant above named, by its attorneys, R. R. Butler and Bennett & Galloway, and under Rule 29 of the Rules governing the practice in equity in the above entitled Court, and moves the Court for an order dismissing the above entitled Amended Bill of Complaint, upon the following grounds, to-wit:

I.

That said Amended Bill of Complaint is not an amended bill, but is a substitution of a new cause of complaint or suit in the above entitled Court, for the reason that the same substitutes entirely and wholly different plaintiffs and calls into question the interests of parties whose interests are wholly and entirely different from the party in whose behalf the original suit was brought and prosecuted.

II.

64 That said complaint does not contain sufficient facts to constitute a valid cause of action or suit in equity against the defendant, nor to entitle the plaintiffs to the relief prayed for or to any relief whatsoever, and particularly upon the following grounds, to-wit:

That the treaty between the Government of the United States and the Yakima Indians described in Paragraph IV of the Amended Bill, especially and particularly confined the said Yakima Indians to the exercise of whatever fishing rights may have been reserved to them, to the Washington side of the Columbia River, and that said treaty did not apply, and that said treaty does not now apply to what is now the Oregon side and the Oregon boundary line of said Columbia River.

R. R. BUTLER,
A. S. BENNETT,
By FRANCIS V. GALLOWAY.
FRANCIS V. GALLOWAY.

STATE OF OREGON,

County of Wasco, District of Oregon, ss:

We, R. R. Butler, F. V. Galloway and A. S. Bennett, hereby certify that we and each of us are regularly admitted to practice law in the Courts of the State of Oregon and in the Courts of the United States for the District of Oregon, and that we have signed the foregoing motion to dismiss plaintiff's complaint and that said motion is made in good faith and that we believe in sincerity and good faith that we are entitled to the order of dismissal asked and prayed for in said motion.

Dated this 29th day of June, 1915, at Dalles City, Oregon.

R. R. BUTLER,
FRANCIS V. GALLOWAY,
Attorneys for Defendant.

65 STATE OF OREGON,

County of Wasco, ss:

I, Francis V. Galloway, being duly sworn say that I am one of the attorneys of record for the defendant in the above entitled case, and that I served the foregoing motion upon Robert R. Rankin, attorney of record for plaintiff, above named, by depositing in the United States Post Office, at The Dalles, Wasco County, Oregon, on the 30th day of June, 1915, one copy of the foregoing motion, duly certified to be such copy by me as one of the attorneys for defendant, which said copy of motion was securely enclosed in an envelope with postage thereon fully prepaid, and plainly addressed as follows:

"Mr. Robert R. Rankin,
Deputy U. S. Attorney,
Post Office Bldg.,
Portland, Oregon."

And I further swear that The Dalles, Wasco County, Oregon, is my residence and place of business, and that Portland, Oregon, is the residence and place of business of said Robert R. Rankin, and that there is communication by United States mail between the said The Dalles, Oregon, and Portland, Oregon.

FRANCIS V. GALLOWAY.

Subscribed and sworn to before me this 30th day of June, 1915.

[NOTARIAL SEAL.]

PAUL W. CHILDERS,
Notary Public for Oregon.

My commission expires Nov. 11th, 1916.

Filed July 2, 1915. G. H. Marsh, Clerk.

66 And afterwards, to wit, on Monday, the 12th day of July, 1915, the same being the 7th Judicial day of the Regular July Term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

67 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA

v.

SEUFERT BROTHERS COMPANY,

JULY 12, 1915.

Now, at this day, this cause comes on to be heard upon the motion of the defendant to dismiss the amended bill of complaint herein, said plaintiff appearing by Mr. Robert R. Rankin, Assistant United States Attorney and the defendant not appearing, and the Court having heard the arguments of counsel, it is Ordered and Adjudged that said motion be and the same is hereby denied.

68 And afterwards, to wit, on the 22nd day of July, 1915, there was duly filed in said Court, an Answer to the Amended Bill of Complaint, in words and figures as follows, to wit:

69 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

'Answer to Amended Bill of Complaint.

To the Honorable Judges of the District Court of the United States for the District of Oregon:

Comes now the Defendant in the above entitled cause and without waiving the manifest insufficiency of Plaintiff's Amended Bill of Complaint to state a cause of action or suit, and without waiving

Defendant's objections heretofore made to said Amended Bill upon the ground that said Amended Bill of Complaint substitutes a new cause of Complaint or suit, and substitutes entirely different plaintiffs, and calls into question the interests of parties whose interests are wholly and entirely different from the parties in whose behalf the original suit was brought and prosecuted; and insisting and relying upon such insufficiency and such substitution of new cause of Complaint or suit, and such substitution of new parties plaintiff, and respectfully presenting said questions to the Court for adjudication, Defendant further answers the allegations of the Amended Bill of Complaint.

70

I.

Answering paragraph I of said Amended Bill of Complaint, Defendant denies that the United States is the guardian of the Confederated tribes or bands of Indians known as the Yakima nation, and denies that the United States is the Guardian of any one or all of the individual members thereof, and denies that the United States is the Trustee of the allotted lands or of any lands of said Indians; or is the Guardian or trustee of all or any of the rights and privileges reserved to said Yakima Indians or any Indians under the treaty with the said Yakima Indians described in the said Amended Bill of Complaint; and Defendant denies that the United States as Guardian or Trustee or in any capacity whatsoever, brings this suit to protect the Indians of the Kakima nation or any Indians, or the rights or privileges guaranteed to them by said treaty, as alleged in paragraph I of the Amended Bill of Complaint, or any rights or privileges whatsoever; or to protect the rights or privileges of said Sam Williams as alleged in said paragraph I; and defendant Denies that the said Sam Williams, or that any one has for some time, or at all, heretofore most constantly or most recently, or at all, used or possessed or occupied the fishing place described in the Amended Bill of Complaint as such a usual or accustomed fishing place of the Yakima nation or at all.

II.

Answering paragraph II of said Amended Complaint, the Defendant admits that Sam Williams is a full blooded Indian, born in the United States; but denies that he is a member of the Yakima nation of Indians; denies any knowledge or information as to whether he is allotted lands within the boundaries of the Yakima Indian Reservation, or as to whether his number is 1525.

Denies that said Sam Williams is a ward of the U. S. Government or receives protection from the United States, or that

71 he is under the charge or control of the superintendent of the Yakima Indian Reservation, but admits that he now resides, and has for over ten years last past resided on the Columbia River above the city of The Dalles, in the County of Wasco, and state of Oregon.

III.

Admits that the Seufert Brothers Company is a corporation, as alleged in paragraph III of said Amended Complaint.

IV.

Answering paragraph IV of said Amended Complaint, the Defendant admits that on the 9th day of June, 1855, articles of agreement and convention were made by representatives of the United States with the Yakima Indians, as alleged in said Amended Complaint, and that said treaty was ratified on the 8th day of March, 1859, and accepted and proclaimed by the President on April 18th, 1859 but denies that said treaty thereby or at all, promised, guaranteed, or secured to the members of the Yakima nation, and to their posterity and successors in interest, the right or privilege of taking fish out of usual or customary places along the Columbia River, except that Defendant admits that the Yakima Indians reserved, by said treaty, the right and privilege for the members of its tribe of taking fish at the usual and accustomed places in the streams running through the territory ceded to the United States by said treaty, and which places of fishing were within said territory, and Defendant alleges that said territory was wholly and exclusively on the north side of the Columbia River, in the territory of Washington.

V.

Answering paragraph V of said Amended Complaint, the Defendant admits that the Indians of said Confederated tribe of Yakimas were wont to visit certain usual and accustomed fishing places, on the Columbia River, for the purpose of catching food fish for their immediate and future need, but denies that the place described in said Amended Complaint as "Lone Tree," or "Lone Pine," or "Little Pine," or "Wasco Charlie's Place," or "Sam Williams' Place," or at Three Mile rapids on the south bank of the Columbia River, was such or any usual and accustomed fishing place for the Yakima Indians at the time of the execution of the said treaty, or ever or at all, and Defendant denies any knowledge or information as to whether or not the place in question was known by the Indian names set forth in said Amended Complaint, or any of them at all.

And Defendant denies that the place described as "That certain portion of the rocks which, at low water, constitutes the south bank of the Columbia River opposite Lot No. 3, in Section 36, Township No. 2, north, of Range 13 E. of the Willamette M., in the County of Wasco, State of Oregon," was a usual or accustomed Indian fishing ground of said Yakima Indians, or any Indians whatever, or that it ever has been such usual or accustomed fishing ground.

Denies that with the increased commercial fishing on the Colum-

bia River, the places for the Indian fishing became very, or at all confined or narrowed in their limits, or that the place described as "That certain point, situated 28.53 chains north, and 12 chains west of the quarter section corner, between Section 1, in Township I, and Section 36 in Township 2, both Townships north of range 13 E., of the Willamette Meridian, in the county of Wasco, and District of Oregon," was an usual and accustomed place of such fishing, at the time of the making of said treaty or ever at all.

Denies that said place is further or at all identified as the usual place where Sam Williams, as a Yakima Indian, or at all, was accustomed to fish with dip-net or fish scow-wheel, for several or any years last past. Denies any knowledge or information as to whether said Indian has driven iron pins into the rocks at said point, at which to anchor his fish scow, or at all. Denies that said alleged fishing place, as described in the Amended Complaint, or at all, was at the time of said treaty, or ever has been, or now is, one of the usual and accustomed places to which Indians of one or more of the Confederate tribes or bands of Indians of the Yakima nation, or any Indians have continually resorted, for the purpose of securing fish, or that it was one of the places which was secured for them, or for their use or benefit by said treaty or at all, or that said tribes or bands of Yakima Indians, or their Indian representatives, or any representatives have fished there, according to their custom, or by more civilized methods, or at all, except when prevented by high water, or by the construction work of the government, or by the threats or actions of the Defendant, or its officers, agents, or employes.

VI.

Answering paragraph VI of said Amended Complaint, the Defendant admits such a custom as is alleged in said paragraph, among the Indians, except that Defendant denies that said custom in any case, extended beyond the territory of a particular band or tribe of Indians, or that the Indians of one tribe had any such right or custom to fish on the lands or country of another tribe, or that the Yakima Indians or any of their Confederate bands had any such custom or right, on the south side of the Columbia River. Denies that said custom has been recognized or followed in the laws of the State of Oregon, or that the act of the legislature, referred to therein, was in recognition of any such custom.

VII.

Answering paragraph VII of said Amended Bill, the Defendant denies that Sam Williams by reason of the custom or usage or custom and usage as alleged in paragraph V of original Bill, or paragraph VI of the Amended Bill of Complaint or at all, or by reason of the governmental protection guaranteed to the Yakima Indians or to any Indians, as alleged in Paragraph VI of the Amended Bill, or at all, has now or for many years or any time

past fished from the point known as "Lone Pine," or "Sam Williams' Place," or as described in paragraph V of the Amended Complaint, with Indian means and methods or at all, during the years, 1906, 1907, 1908.

And Defendant denies that Sam Williams has operated a scow fish wheel at said "Lone Tree" point, during fishing season of the years 1910 and 1911, or during the fishing season of the years 1911 and 1912 or during the fishing season of the years '12 & '13, or during the fishing seasons of the years 1913 and 1914, or during any other time except as hereinafter admitted and alleged.

And Defendant admits that Sam Williams, during the fishing season of 1914 and 1915, attempted to operate a scow fish wheel at said fishing place, and

Admits that Defendant prevented him from so doing, but Defendant denies any knowledge or information as to whether or not Sam Williams had a scow fish wheel license or licenses, issued by the state of Oregon, and numbered "o-27," or "o-31," or "o-34," or "o-26," or any other number, during the year 1910 or the year 1911, or the year 1912, or the year 1913, or the year 1914, as alleged in paragraph VIII of the Amended Bill of Complaint, or at any other time.

And Defendant denies that the fishing rights so claimed and exercised, or any fishing rights attempted to be claimed or to be exercised or claimed and exercised were a portion of those fishing rights and privileges guaranteed by the Yakima treaty aforesaid, and

Denies that the said alleged rights or the said alleged fishing was prior in point of time or interest to the fishing or the fishing rights of any white man or Company or corporation, or that it was prior in point of time or interest to the fishing rights of the Defendant Company, and to its agents or employes.

VIII.

Answering paragraph VIII of said Amended Complaint, the Defendant denies that it, by its officers, agents, or employes, or at all, has at the times, or in the manner set forth in paragraph VIII of Plaintiff's Amended Complaint, or at all, interfered with, or intentionally deprived said Sam Williams of his rights or privileges, or any right or privileges of taking fish from his usual and accustomed, or any place of fishing as described in paragraph V of the Amended Complaint, or at all, and denies that said Sam Williams is an Indian dependent of the Plaintiff, and denies that said alleged interference was by threats of damage or destruction or that they ever made any such threats, or that said alleged deprivation of fishing privilege was accompanied by use of actual force or violence or damage to the property of Sam Williams, or with the intention of forcing said Sam Williams to abandon his fishing place, or that the same might be acquired for the use or benefit of the Defendant Company, but admits that, at certain times, when the said Sam Williams had gone upon the Defendant's lands, and tied his scow to said lands, far above the line of ordinary high water, the said Defendant, by its

employees, did unfasten the ropes fastened to stakes and pins upon the Defendant's said lands, and Defendant admits that about the time alleged on May 13th, 'certain employees of the Defendant did so unfasten and unloosen the ropes and cables, by which the said

76 Williams was attempting a continuous trespass upon the Defendant's lands, but denies that the current, at said time, partially, or at all, wrecked said scow, or that said Sam Williams was greatly or at all damaged or injured thereby.

Admits that about the month of May, 1913, the employees of the Defendant Company unloosed the ropes fastening said scow to the shore, where said ropes were fastened on the land and premises of this Defendant, and not otherwise, and denies that said scow was partially or at all wrecked. Denies that the same was done in the best part of the fishing season, or to the great or any damage or injury of said Sam Williams.

Denies that on or about the 15 day of April, 1914, or at any time in 1914, the said Sam Williams again or at all anchored his fishing scow-wheel to the rocks at the particular fishing place described in paragraph V, or fastened or moored the same to any iron post driven into said rocks, by said Sam Williams, and admits that said scow was at that said time moored to the shore about 100 or 150 feet below said point and tied and fastened upon Defendant's land, and admits that the Defendant Company, by its employees, unfastened said fastenings on the land of the Defendant, and not otherwise.

Denies that on or about the 28 day of April, 1914, said Sam Williams again moored said scow at said fishing place, but admits that he did, about that time, moor said scow at a point about 100 or 150 feet below the point in question, and trespassed upon the lands of the Defendant, and fastened it as before upon the lands belonging to said Defendant, and Defendant admits that said employees of Defendant untied the ropes where the same were fastened upon the lands of the Defendant, and not otherwise, and denies that the Defendant ordered its employees to cut any wire cables attached for that purpose or at all, or forced said scow into the current of the Columbia River. Admits that said scow drifted down said river, but denies that it endangered the lives of the Plaintiff and his
77 men, or damaged the scow.

Admits that on or about the 3 day of May, 1914, the said Sam Williams fastened certain iron cables to an iron post, opposite the point in question, and on the lands of the Defendant, but denies that said cables were of considerable or any more than trifling value. Admits that the Defendant unfastened the said cables, where they were upon its land, and threw them off from its land, but alleges that said cables were old, rusty, pieces of cable of trifling value, and that the placing of the same upon Defendant's land by said Sam Williams was trespassing and for the purpose of acquiring rights upon Defendant's lands, and that Defendant threw them off for the purpose of protecting his own rights and not otherwise.

Defendant admits that on or about the 4 day of May, 1914, the said Sam Williams fastened his scow upon Defendant's land at a point below the point in question, and that the said Defendant un-

fastened the lines holding said scow, where the same were tied and fastened upon the lands of the Defendant and not otherwise, and denies that Defendant pulled up the anchors attached to said lines, and denies that said scow was carried down the river and dashed against the rocks, or that it was dashed against the rocks at all, or greatly or at all injured.

Denies that the Defendant Company, its officers, agents, or employes, have threatened on numerous or any occasion, since the year, 1913, to cut said scow fish-wheel of Sam Williams loose, or have hindered or prevented said Sam Williams from using or enjoying his prior, ancient, or usual or accustomed fishing rights or privileges, or any privileges or rights lawfully belonging to him at the point described or any point.

Admits that on or about August 3, 1914, Defendant located its fish wheel scow "o-1" at the fishing point described in plaintiff's Amended Complaint, but denies that said point was the usual or accustomed fishing place of Sam Williams, or that it belonged
78 to Sam Williams, or that such fishing was to the entire exclusion of all or any rights or privileges of said Indian, and denies that said place was a place where said Defendant Company had never operated a fishing scow wheel before, but alleges the truth to be in that regard that Defendant had located its scow wheel in said point in April and May of 1914, but that early in said season it was broken and injured by some evil disposed person so that the same floated away and was partially destroyed, and that Defendant was unable to get it back there, or get another scow in its place until about August 3, 1914.

Defendant admits that it objected to the issuing of a license to said Sam Williams in 1915, upon the ground that it conflicted with the prior rights of the Defendant, and upon the ground that it was within less than 900 feet of another wheel occupied and duly licensed to the Defendant and its employes.

Admits the building of the wall at the point in question, substantially as alleged in Plaintiff's Amended Complaint. Denies that said wall was intended by said Defendant, or that it does interfere with the fishing of Sam Williams, and alleges that said wall was put there upon the land of the Defendant for the purpose of improving said fishing point, and making it better so that the scow fish wheel could lie there with greater safety and convenience.

Denies that all the acts or any of the acts described in the Amended Complaint, of Defendant or its employes have deprived Sam Williams of any rights or privileges of fishing at the point in question, or that he had any rights or privileges of fishing there, or that it was his usual or accustomed fishing place.

IX.

Admits that at about the time in question the Defendant Company placed a fish wheel scow in the waters of the Columbia River at the fishing place described in paragraph V, and afterwards operated

79 said scow, and denies that said fishing by the Defendant was to the exclusion or deprivation of any ancient or usual or accustomed rights or privileges of the said Sam Williams, or any or all of the alleged Indian Wards of the Plaintiff.

Admits that the Spring run of Salmon was on at the commencement of this action, but denies that said Sam Williams is or was, irreparably, or at all damaged each and every day he was deprived of fishing at said point, or that he had been damaged at all by any act of the Defendant, in relation thereto.

Denies that the run of Salmon is or was unusually good, or that it was good at said point at all. Denies that the Indian Sam Williams, has or claims but one fishing point or that he is in poor circumstances, or dependent upon his fishing for a living.

X.

And Defendant denies any knowledge or information as to whether or not said Sam Williams has or has not, or as to whether his predecessors in interest have or have not, at any time, sold, assigned, or conveyed his or their alleged rights or privileges; and denies any knowledge or information as to whether or not the United States has ever, in any manner, limited or disposed of the fishing rights of the Yakima nation as reserved in said treaty; and Defendant denies again that said point in question was an usual or accustomed point of fishing of said Sam Williams, or of said Indians, or that said Sam Williams or said Indians ever had any rights therein.

XI.

Denies that all or any of the acts, claims, or pretenses of said Defendant Company, or its officers, agents, or employe, are contrary to equity or good conscience, or tend to the manifest or any damage or oppression of the Confederated bands and tribes of Indians known as the Yakima nation, or of the Indian—Sam Williams, or
80 to the Plaintiff herein, or that the Defendant Company has deprived, or will continue to deprive, unless prevented by this Court, the Yakima Indians, or this particular alleged Indian ward of the Plaintiff, or the said Sam Williams, of their or his or any usual and accustomed fishing rights at the point in question, or at all.

XII.

Denies that the Plaintiff and the said Sam Williams have no plain, speedy, or adequate remedy at law, or that they or each of them have no adequate remedy in equity, excepting in this Court, or that this Court has any jurisdiction thereof.

And for a further and separate affirmative answer, the Defendant alleges:

I.

That the Sam Williams, mentioned in Plaintiff's Amended Complaint, is a Cowlitz Indian, born in the Cowlitz tribe of a Cowlitz mother, and has never, in any way, become a member of the Yakima Indian tribe, and had never resided upon the Yakima Indian Reservation, and that he is, and long has been a citizen of the United States, enjoying all the rights of citizenship, and that he has resided in the state of Oregon for more than 21 years, and has taken, and is now living upon a homestead in said state of Oregon, and that his relations with all Indian tribes have been entirely severed, and that he is in no sense a ward of the United States Government, and Defendant further alleges that the Government of the United States, or the District Attorney for said Government have no right or authority to bring this action and that they are not the parties in interest in this case, or in any way interested therein.

II.

Defendant further alleges that it is the owner in fee simple of Lot 3, in Section 36, Township 2 N. of Range 13 E., of the Willamette Meridian, and lots one and two of Section I, in Township one N., R. 13 E., and that said lots lie along the Columbia River at the point in question, and extend to the ordinary high water of said river and cover the point in dispute and the point where the Indian, Sam Williams, was attempting to fasten the lines of his scow wheel at the times complained of in the Complaint, and that said fastenings of said ropes and cables upon the lands of the Defendant, were a willful trespass.

That the scow wheel of the said Indian, Sam Williams, was a permanent structure, and that the placing of it in front of and against the shore of the Defendant, permanently shut off the access of said Defendant to and from the shore and the water, and was a permanent obstruction of the right of the Defendant to pass with its employes back and forth from the shore to the water, and did entirely prevent the Defendant from exercising its right of fishing either for Salmon or any other fish, either with wheels or with ordinary fishing tackle, or in any other way along the shore.

III.

Defendant further alleges that the right of fishing exercised by the Yakima Indians, in 1855 (where they had any rights of fishing at all) were not by means of permanent structures, like fish wheels or fish scows, but were exercised by hand, by the spear, and dip-net, and in other simple and primitive ways. That fishing by fish wheels and scows and other permanent structures were, at that time, unknown both to the Indians and Whites, and were not in the contemplation of the parties at the time of the execution and ratification of said treaty.

82 That the fishing with such permanent structures as were being used by the Indian, Sam Williams, and as are being attempted to be enforced in this action are permanent and exclusive in their nature, and cannot be exercised by the Indians in common with the white citizens of the territory as provided in said treaty, and that said Indian, Sam Williams, has never desired to fish or offered or attempted to fish at the point in question in any of the primitive ways contemplated by said treaty, but that, on the contrary, he has attempted and desired to place a permanent structure in front of the Defendant's shore, exclusive in its nature, and which would entirely prevent the Defendant from fishing at that point, and to operate the same with a force of men, some of whom are white men, for the purpose of commercial fishing and sell the fish at the white men's canneries on a large scale, and that said fishing is not within any rights belonging to the Yakima Indians, even if they had, otherwise, a right of fishing at the point in question.

IV.

The Defendant further alleges that at time of the treaty in question, the Yakima Indians and their Confederated tribes, claimed and occupied the lands on the north shore of the Columbia river in the territory of Washington, and did not claim or occupy any land on the south shore of the said Columbia River, but that their boundaries stopped at the center channel of the Columbia River, and did not cover the point in question. That, at said time, the lands on

83 the south shore of the Columbia River, and covering the point in question, were claimed and occupied by certain other tribes of Indians, living in the country known as "Middle Oregon," and that during the same year and about the same time of the execution of the treaty with the Yakima Indians, under which Sam Williams now claims, the United States negotiated with the said "Middle Oregon" Indians, another treaty, in relation to the land claimed and occupied by them on the south shore of the Columbia River, and extended to the middle channel of said River, and that said treaties were ratified by the Senate of the United States, on the same day and year, and proclaimed by the President on the same day, and should be construed together. That in said treaties, the land on the north shore was recognized as being claimed and occupied by the Yakima Indians, and that on the south shore claimed and occupied by Oregon Indians, and that similar rights were recognized and reserved to each tribe respectively, as to fishing in the territory, claimed, occupied and ceded by it.

That by the plain indication of said treaties, the rights of fishing reserved to the Yakimas were entirely within their own territory on the north side of the river, and the rights reserved to the Middle Oregon Indians were entirely on their own territory on the Oregon side, and that, thereafter, by a treaty with the Middle Oregon Indians, the right of Indian fishing upon that side of the River was entirely withdrawn and extinguished, and the lands along the shore of the Columbia on the Oregon side, were afterwards conveyed by

the government of the United States to the Defendant and its predecessors in interest, free from any Indian fishing rights whatever, except the right which they might maintain under the general laws, the same as any other citizen of the United States.

84

V.

And Defendant further alleges that during the years 1913, 1914, and 1915, and long prior thereto, the Defendant had license and was operating through its agents and employes, a fish wheel on the point in question, about 750 feet above the point in dispute, and that the laws of Oregon provide that no fish wheel, or fishing scow can be licensed or operated within 900 feet of a wheel or scow already licensed or operated, and that the attempt of the said Sam Williams to locate or operate his fish-scow, or to obtain a license therefor, without the consent of the Defendant, was contrary to said laws, and was unlawful and interfered with the rights of said Defendant.

Wherefore and in order to protect its prior right of fishing, and in order to protect its ownership at the point in question, and to prevent trespass thereon, and to prevent the said Sam Williams from acquiring rights by the statute of limitations, the Defendant did at the times in question, perform such of the acts set forth in the Complaint as are hereinbefore admitted and not otherwise.

Wherefore Defendant prays that this cause be dismissed, and that it go hence without day and have Judgment for its costs and disbursements made and expended herein.

R. R. BUTLER.

A. S. BENNETT.

By F. V. GALLOWAY,

FRANCIS V. GALLOWAY,

Attorneys for Defendant.

85 UNITED STATES OF AMERICA,

District of Oregon, County of Wasco, ss:

I, F. A. Seufert, being duly sworn, say that I am the President and Managing Officer of the Defendant Corporation above named, and that the facts set forth in the foregoing Answer to the Amended Bill of Complaint are true as I verily believe.

F. A. SEUFERT.

Subscribed and sworn to before me this 21st day of July, 1915.

FRANCIS V. GALLOWAY, [SEAL.]

Notary Public for Oregon.

My commission expires Aug. 3rd, 1915.

STATE OF OREGON,

County of Wasco, ss:

I, Francis V. Galloway, being duly sworn, say that I am one of the attorneys of record for the Defendant above named, and that I

served the foregoing answer to amended bill on the attorney of record for the Plaintiff above named, by depositing in the United States Post Office, at The Dalles, Oregon, on the 21st day of July, 1915, a copy of the foregoing answer, prepared and certified to by me as one of Defendant's attorneys, which said copy was securely enclosed in an envelope, with postage thereon fully prepaid and plainly addressed as follows:

"Hon. Robert R. Rankin,
Deputy U. S. Attorney.
Post Office Building, Portland, Oregon."

FRANCIS V. GALLOWAY.

Subscribed and sworn to before me this 21st day of July, 1915.

[NOTARIAL SEAL.]

PAUL W. CHILDERS,
Notary Public for Oregon.

My commission expires Nov. 11th, 1916.

Filed July 22, 1915. G. H. Marsh, Clerk.

86 And afterwards, to wit, on the 1st day of May, 1916, there was duly filed in said Court, an Opinion of the Court, in words and figures as follows, to wit:

87 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex Rel. Sam Williams,

v.

SEUFERT BROTHERS COMPANY, a Corporation.

Clarence L. Reames, United States Attorney.
Robert R. Rankin, Assistant United States Attorney.
R. R. Butler and Bennett & Galloway for the Defendant.

WOLVERTON, *District Judge:*

This is a suit first instituted by the United States of America, on the relation of Sam Williams, against Seufert Brothers Company, a corporation, to establish ancient fishing rights at a place described as "That certain portion of the rocks which, at low water, constitute the south bank of the Columbia River opposite lot number 3, in section 36, township number 2, north of range 13, east of the Willamette Meridian, in the County of Wasco, State of Oregon."

By leave of the court first had and obtained, the bill of complaint

was amended so as to make the United States of America, as Trustee and Guardian of the Confederated Tribes and Bands of Indians, and as Trustee and Guardian of and ex rel. Sam Williams, plaintiff, against Seufert Brothers Company, a corporation, defendant. Being so amended, the further allegations with reference to the locus in quo of the fishing ground are as follows:

88 "With the increased commercial fishing on the Columbia River, the places for the Indian fishing became very confined and narrowed in their limits and a particular fishing place now claimed by this plaintiff in the behalf and for the benefit of the Yakima Nation of Indians and the most recent and consistent user, Sam Williams, is particularly described as follows, to-wit:

That certain point situated 28.53 chains north and 12 chains west of the quarter section corner between section 1, in township 1, and section 36 in township 2, both townships north of range 13 east of the Willamette Meridian in the County of Wasco, State and District of Oregon.

Said place is further identified as the usual place where Sam Williams, as a Yakima Indian, was accustomed to fish with dip-net and fish scow wheel for several years last past and where this Indian has driven iron pins in the rocks to which to anchor his scow fish wheel to the south bank of the Columbia River, and where the letter and figures 'O 34' are marked on the rocks, the same being the number of the fishing license issued by the State of Oregon to Sam Williams for the fishing season of the year 1913.

This fishing place, as in this paragraph generally and particularly described, was, at the time of said treaty, always has been and now is, one of the usual and accustomed places to which Indians belonging to one or more of the confederated tribes and bands of Indians of the Yakima Nation, have continually resorted for the purpose of securing fish and which place was secured to them for their use and benefit and which place said tribes and bands of Yakima and their

89 Indian representatives have fished according to their customs and by more civilized methods except when prevented by high water, by the construction work of the United States Government in widening the channel of the Columbia River at this point, or by the threats and acts of the defendant company, its officers, agents and employes, as hereinafter particularly set forth and complained of."

Under the testimony, the locus in quo was considerably extended so as to comprise the entire point known by the Indian tribes as Kum-sucks, reaching from below the point where Sam Williams had his wheel set in the years 1910, 1911, 1912 and 1913, and where he attempted to maintain it in the year 1914 as against the claim of the defendant company, around the point up the river to and even beyond a point where Henry Gulick or his wife claims to own and possess, including the location where Peter Jackson, an Indian, has for a time and does now maintain a fish-wheel. The description is perhaps broad enough to suggest an inquiry as to the ancient fishing rights of the confederated tribes of the Yakima Indians to the entire point known as Kum-sucks, whether it be immediately at the point

or for a stretch around and below or around and above such point. Such, therefore, will be the present inquiry.

To sustain the fishing rights, it is further alleged in effect that from time immemorial there have been and now are maintained by the confederated tribes and bands of Yakima Indians now settled upon the Yakima Indian Reservation in the State of Washington usual and accustomed fishing places which, by treaty regulations, belong to such tribes and bands as of right, and to which they "are entitled to resort for the purpose of gathering fish for food and domestic and other uses."

On June 8, 1855, the General Government made and entered into a treaty with the following named confederated tribes and bands of Indians occupying lands in Washington Territory, to-wit: Yakima, Palouse, Pisquouse, Wenatshapam, Klikitat, Klinquit, Kow-was-sav-ee, Li-ay-was, Skin-pah, Wish-ham, Skyiks, Ochechotes, Kah-milt-pah, and Se-ap-cat, who, for the purpose of the treaty, were considered as one nation under the name of "Yakima", with Kamiakun as its head chief.

By article 1 said confederated tribes and bands ceded to the Government certain territory specifically described by metes and bounds. Among other courses, the following are prescribed: "Thence, in a southwesterly direction, to the Columbia River, at the western extremity of the 'Big Island', between the mouths of the Umatilla River and Butler Creek; all which latter boundaries separate the above confederated tribes and bands from the Walla-Walla, Cayuse, and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers; thence along the divide between said rivers to the main ridge of the Cascade Mountains; and thence along said ridge to the place of beginning."

Article 2 reserves from the territory described by article 1 a specific tract for the exclusive use and benefit of such confederated tribes and bands of Indians as an Indian reservation.

By article 3, "The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land."

By the eighth article said confederated tribes and bands of Indians acknowledged their dependence upon the Government of the United States.

2 Kappler's Indian Affairs, Laws and Treaties, 524.

The first and most important question of legal import to be determined is whether, by intendment of the treaty, the usual and accustomed fishing places of any of these confederated tribes or bands of Indians situated on the south bank of the Columbia River opposite

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the territory ceded, if they had such so situated, were reserved for their use and benefit.

The question depends for its solution entirely upon the construction of the treaty. It is urged with strong persuasion that the Government and these tribes of Indians were dealing alone with the territory ceded, and none other, and that when the right of taking fish at all usual and accustomed fishing places was reserved, reference was had to such fishing places as were comprised by the territorial boundaries of the ceded domain. This would be true, undoubtedly, had the two parties been citizens of equal experience and intelligence, and had the Government not been seeking in a sense to encompass the guardianship of these untutored races, where the broadest
92 scope of good faith and fair dealing should always, as in like and similar conditions, be exercised.

Treaties, like contracts, must be taken by their four corners, and construed as a whole, in order to ascertain their true meaning and intentment. Furthermore, it is helpful to put oneself in the place of the contracting parties, and view their situation and surroundings, and read the minds, if possible, that formulated and finally concluded the articles which they have made their own by their signatures.

On the same day that the Yakima treaty was concluded, to-wit, June 9, 1855, the Government concluded another treaty with the Walla Walla, Cayuse and Umatilla tribes and bands of Indians for ceding territory contiguous in part to the territory ceded by the Yakimas, and containing a like stipulation respecting the right of taking fish "at all other usual and accustomed stations in common with citizens of the United States."

2 Kappler's Indian Affairs, Laws and Treaties, 521.

And a little later, on June 25, 1855, the Government concluded a treaty with the tribes and bands of Indians of Middle Oregon, whereby such Indians ceded to the General Government the territory lying to the south of the Columbia River opposite the southern boundary of the lands ceded by the Yakima nations.

2 Kappler's Indian Affairs, Laws and Treaties, 536.

The territory ceded is bounded in part by a description "Commencing in the middle of the Columbia River, at the Cascade Falls," and running thence southerly, etc., etc., to the head-
93 waters of Willow Creek; "thence down stream to its junction with the Columbia River, and thence down the channel of the Columbia River to the place of beginning."

This treaty contained also a stipulation to the effect that the Indians should have the right to take fish "at all other usual and accustomed stations, in common with citizens of the United States."

Other treaties were concluded about the same time, namely, with the Nez Perces and other tribes, ceding lands further to the east as well as further to the west. So that it can readily be seen that the broad purpose of the Government was to conclude equitable and lasting treaties, if possible, with all the tribes and bands of Indians in

the Northwest, so as to extinguish the Indian title to all the lands in the country not set apart to the Indians for reserves, and to open up the same more fully to general settlement and occupancy. The Indian Tribes did not themselves occupy definite territory with fixed and exact boundaries, and it is without doubt that the different tribes commingled more or less, and roamed, in their hunting and in the chase, about over the demesnes one tribe of another. And so of their fishing—there was no monopoly by any one tribe of any specific and fixed territory.

The tribes and bands were very numerous, and it was most convenient to treat with them in groups, as their settlement in definite locations could be agreed upon, and the combined territory of the groups relinquishing title was comprised by one boundary.

94 In this wise, taking them by groups, all the territory was covered by relinquishment of Indian title. The group boundaries were consequently, in many instances at least, made contiguous, and they very naturally only followed in a general way the very general idea that the Indians had of their territorial delimitations.

Now, it cannot be predicated of the Indian mind in those early times that particular stress was laid upon any precise or exact boundary line as a delimitation of ceded territory; nor was it of especial concern to the General Government, as its ultimate object was to obtain a cession of the Indian title to all Indian territory, and that within a comparatively short compass of time, so that great emphasis cannot be ascribed to any idea of absolute exactness in establishing the delimitations of ceded territory. It was not a thing, under the conditions then existing and in view of the matters in contemplation, of very great essentiality to either party to the treaties being negotiated. The Indians were giving up all they had for a lesser area, with enlarged rights pertaining thereto, and the Government was getting relinquishment of the Indian title to all public lands.

Now, with this premise in view, we may the more confidently discuss the meaning and intendment of the clause "All usual and accustomed places." "All," of course, is a term of very broad significance, and it must be limited by the context and by the understanding that the Indians probably had of it at the time the treaty was consummated. Mr. Justice McKenna, in *United States v. Winans*, 198 U. S. 371, 380, has made use of this significant language:

95 "And we have said we will construe a treaty with the Indians as 'that unlettered people' understood it, and 'as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection,' and counterpoise the inequality 'by the superior justice which looks only to the substance of the right without regard to technical rules.'" Citing 119 U. S. 1, and 175 U. S. 1.

The clause giving the exclusive right of taking fish in all streams where running through or bordering on the reservation is immediately followed by the words, "as also the right of taking fish at all usual and accustomed places, in common with the citizens of the territory." No particular stress can be laid upon the words "citizens

of the territory," as other lands were being ceded out of the same territory by other tribes; and then, by reference to the treaties made with the Walla Walla, Cayuses and Umatillas, and the Central Oregon tribes, it would seem that "citizens of the United States" were probably intended. By the former part of the clause, the right of taking fish was defined by exact limitations, while in the succeeding part the right is extended to all usual and accustomed places. To the Indian mind this would comprise all places where they were wont to take fish. They would not stop to consider any limitation of the territory they were then ceding to the Government. It would probably not occur to the Indians that the circumstance of territorial boundary would have anything to do with it, since, to their mind, all such places were being reserved for their benefit anyway. Quite true, some famous chiefs participated in negotiating these treaties, but none of them were trained in the art of drawing contracts, nor were they adepts in the exact use of a language
 96 with which they were not familiar. It may well be that they had no intention of depriving themselves of a right to resort to any fishing places where they had previously been wont to fish, and they are in justice and right entitled to the benefit of any doubt on that subject.

The Indians could not be supposed to know the rule of law that the thing excepted or reserved must be out of the thing granted, and hence but little weight must be ascribed to such and like rules in dealing with this unlettered and untutored race of people.

It is true also that the limitations of the territory ceded by the Middle Oregon Indians conforms with the boundary of the territory ceded by the Yakima Indians. But this again is referable to the Indian mind for construction, and so it is that the Columbia River as a boundary may not mean as much to them as to the mind of the superior white man.

One of the conditions attending the negotiations of such treaties is the fact, which I deem has been fairly established by the testimony, that the Indians from one side of the river were accustomed to cross to the other side for taking fish, and vice versa, and thus the Indians of either side were accustomed to resort to the usual places of taking fish upon the other side. They intermarried and intermingled freely, and the Indians of one side neither claimed nor asserted any monopoly of the fishing places as against the Indians on the other side of the river, and all, whether from the one side or the other, seem to have had free access and recourse to the fishing places wheresoever located. In the nature of things, all could not
 fish at the same time, but they came and went as their wants
 97 were satisfied. One Indian likened the river to a great table where all the Indians came to partake. It is related especially of the Wish-ham tribe, though few in number and occupying but small territory on the Washington side, that they spoke the language of the Wascos, that the two tribes intermarried freely and were interrelated, and that they were wont freely to pass from one side of the river to the other, and to take fish at the ancient and usual fishing places upon either side, treating such fishing places at all

times as common property or possession, to which all had a right in common to resort. The Wish-ham tribe, we may be reminded, is one of the contracting parties to the Yakima treaty. So that, taking into view the context of the treaty, the parties contracting, the nature and subject-matter, the conditions existing at the time and the circumstances attending the negotiations, I am persuaded that, by intendment, the usual and accustomed fishing places on the south side of the Columbia River to which the confederated tribes and bands of Yakima Indians, or portions of them, were wont to resort, were included by its terms.

The next question is one of fact, which is, whether Kum-sucks was a usual and accustomed fishing place for any of the confederated tribes and bands of Yakima Indians entering into the treaty with the General Government of June 1, 1855. The testimony on the subject is so voluminous that it is quite out of the question to attempt to review or analyze it. I can do no more than set forth general conclusions.

98 Many witnesses have testified to the general fact that the Wish-hams and other Indians from the Washington side, including Yakimas, from a very early date came over every year, and from year to year, to fish at Kum-sucks. Kum-sucks has relation to the particular point of rocks from which the Indians fished. Wah-sucks denoted the camping place of the Indians, which was located back and inland of the point of rocks, and both are referred to by the Indian witnesses, sometimes interchangeably. Wah-sucks signifies "lone tree," taking its name from a pine or fir tree which formerly stood near or at the place. Kum-sucks was a somewhat earlier fishing-place than others farther up the river, and the Indians would resort to it at the earliest opportunity for catching fish to supply themselves with food.

At the preliminary hearing for an injunction, it was strongly contended that the Indians could not cross the river in the near vicinity because of the turbulency of the stream, but the testimony on the final hearing was of such a character as to dissipate any doubt on the subject. There was one crossing just above and quite near the point, and two or three others not far above; and besides Indians crossed some distance, even miles above, and came down on the south side of the river to the point, and others were wont to cross at The Dalles and go up the river to reach it.

It is still maintained, however, that the point was not, and never was, a usual and accustomed place for the Indians to fish, and much testimony of a negative character has been adduced to substantiate the position. The testimony, on the other hand, of an affirmative nature, however, persuasively establishes the fact of the existence of a usual and accustomed fishing place at Kum-

99 sucks; and this having due regard for the significance of the terms "usual" and "accustomed." The Wish-hams from the north side fished mostly at the point; and the Skins and some Yakimas and still others were wont to make that a resort for catching fish. They not only fished there regularly and continuously during the fishing seasons, but they camped at Wah-sucks and constructed platforms

and houses in which to dry and cure their fish, through this means preparing it for winter use, and in due time the Indians from the North carried away their fish to their habitations upon the other side of the river. The Indians from the South, and especially the Wascos, made the place a rendezvous for fishing, even to the extent of establishing and maintaining for a long space of time an Indian village at Wah-sucks, and to this day some of their huts and habitations still remain. The Indians both from the South and from the North habitually for many years resorted to this place for the purpose of taking fish for food purposes.

I take it that the fact that Kum-sucks was a usual and accustomed fishing place, not only for the South bank Indians but for the North bank Indians as well, and especially for the Wish-hams and Skins and others of the Yakima confederated tribes, has been fairly well established, and so hold.

Another question presented is whether Sam Williams is a ward of the Government in the sense that the Government is required to or should interpose in his behalf to protect any fishing rights he may have or possess at Kum-sucks.

Williams was born off the Yakima Indian Reservation. His mother was a Cowlitz and his father a Yakima Indian. He is an allottee (No. 1525) on the reservation, his patent having been issued to him July 10, 1897. He subsequently disposed of a portion of his allotment, the transfer being made through the interposition of the Government. The date of this transfer is July 11, 1910. The remainder of the allotment he still holds. He has lived for the last 21 years off the reservation, has taken a homestead, and, as conceded by the Government, has become a citizen of the State of Oregon. His allotment was made in pursuance of the general act of Congress of February 8, 1887 (24 Stat. 388), providing for allotments of lands to Indians. By section 6 of this act, upon completion of the allotments and the patenting of the lands, each and every member of the respective bands and tribes of Indians to whom allotment was made was accorded the benefit of and made subject to the laws, both civil and criminal, of the state or territory in which he might reside. And it was further provided as follows:

"And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property."

In the case entitled Matter of Heff, 197 U. S. 488, the Supreme Court declared that an Indian who had received an allotment and been granted his first patent was no longer a ward of the

Government, but a citizen of the United States and of the state in which he resided, and was without the pale of Indian police regulations on the part of the Government.

Williams is not only an allottee, but has voluntarily taken up, within the limits of the United States, his residence separate and apart from any tribe, and has adopted the habits of civilized life. He is entitled under either or both the conditions of the statute to all the rights, privileges and immunities of a citizen of the United States, and, being so entitled, is declared to be a citizen of the United States. As said in the *Heff* case, the Government is under no perpetual obligation to continue the relationship of guardian and ward, and it may at any time abandon its guardianship and leave the ward to assume and be subject to all the privileges and burdens of one sui juris.

A later statute, namely, the Act of Congress of May 8, 1906 (34 Stat. 182), has left the impress that Congress believed that it acted hastily in adopting the 1887 statute, and especially since the construction placed upon the latter by the court in the *Heff* case. *United States v. Celestine*, 215 U. S. 278.

The act of 1906 contains an amendment of section 6 of the act of 1887, and extends the same benefits to allottees as the original act, but they do not become effective until the expiration of the trust period. And later in the act it is specifically declared that until the issuance of fee simple patents, all allottees to whom trust patents shall "hereafter" be issued shall be subject to the jurisdiction of the United States. The special declaration is indicative of a careful regard on the part of Congress for the rights previously acquired under the act of 1887 before amendment, and of a purpose not to impair or curtail the benefits received under that act in any way. So that Williams' rights and immunities acquired by his allotment were not in the least disturbed by the amendatory act. Being entitled to such immunities, he should not be permitted to disavow any of the benefits accorded him.

But, further than this, Williams has voluntarily separated himself from his tribe (assuming that he became a member of the Yakima confederated tribes by his allotment), and has taken up his abode elsewhere, and adopted the habits of civilized life. This he is precluded by his own acts and demeanor to deny, and it is hardly possible to conceive of a condition that would more completely impose upon him the status of a citizen and evidence a more perfect waiver of all dependence for affording him redress upon the Government in the capacity of a guardian of one acting under any legal disability. Regarding the situation in which he has placed himself, therefore, it is confidently believed that Williams is not now a ward of the Government, much less can he demand the interposition of the Government for the protection of any fishing rights that he may now have or may heretofore have had as a tribal Indian allied with the confederated Yakima tribes and bands now settled upon the Yakima Indian Reservation.

That the Government still remains Williams' trustee as it relates to the title to his allotment and any money distribution that he

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may be entitled to by reason of once having been a member of the Yakima confederated tribes, can have no bearing upon the question as to whether he continues to be a ward of the Government.

Another feature of the controversy to be observed is, that the testimony falls short of establishing the fact that the place where Williams is seeking to have his wheel located, or its immediate environment, ever was a usual and accustomed fishing place for the Indians of the Yakima confederated tribes. There has been some evidence adduced to the effect that such Indians may have at some time in the past fished at the place, but the great mass of evidence indicates that the ancient fishing places extended from the extreme point known as Kum-sucks, perhaps from a point around it somewhat below, thence up stream to and beyond where Jackson's wheel is located.

Of course, Williams must prevail, if at all, by the establishment of an ancient fishing right, for he claims none other, and could not succeed in this suit upon any other hypothesis. Such a right, being reserved by the treaty, is paramount to any subsequent right attempted to be granted by the Government, and especially any right which the state might assume to confer. *United States v. Winans*,
supra.

104 Williams' failure to succeed, however, does not detract from the right of the confederated tribes and bands of Yakima Indians to succeed, for the suit is by the Government as their trustee and guardian, as well as the trustee and guardian of Williams, and their success is in no way dependent upon that of Williams.

To be particular, it is my judgment that the right of the Yakima confederated tribes to take fish at Kum-sucks as a usual and accustomed fishing place has been established under the evidence to that part of the south shore or bank of the Columbia River beginning at the furthestmost point down stream of the removal of rock at Kum-sucks by the Government in constructing the Celilo Canal, and extending thence up stream around the point to where the shore line meets the premises of Henry or Harriet Gulick, including the place where Peter Jackson's wheel is now located. The defendant should be enjoined from exercising any pretended fishing right along or within this space.

The question was also presented whether the Indians were entitled to employ any other methods for catching fish than they were wont to employ in more primitive times.

Without discussing the subject at length, I see no reason why Indians may not be permitted to advance in the arts and sciences as well as any other people, and if they can catch their supply of food fish by a more scientific and expeditious method, there exists no good reason why they may not be permitted to do so. Even more, they ought to be encouraged to adopt the more modern and advanced ways of prosecuting their enterprises.

The rights here ascertained and determined, it must be
105 understood, are to be exercised in common with citizens of the United States, as the treaty so provides. How the common privilege is to be exercised is a subject with which we are not

now concerned. When the subject arises, there will be found, it is hoped, a way of satisfactory adjustment.

I deem it equitable that neither party should recover costs or disbursements, and the decree will so provide.

Filed May 1, 1916. G. H. Marsh, Clerk, by K. F. Frazer, Deputy.

106 And afterwards, to wit, on Monday, the 31st day of July, 1916, the same being the 24th judicial day of the Regular July Term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

107 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederate Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Decree.

This cause coming on to be heard on motion of plaintiff, appearing by Robert R. Rankin, Assistant United States Attorney for the District of Oregon, its attorney of record, for a decree herein, and defendant not appearing, and

Said motion being based upon the amended complaint herein, the evidence adduced upon the trial of said cause, and the opinion of the court rendered herein on Monday the first day of May, 1916; and

It appearing to the court from the pleadings on file in the above entitled cause, and from the written and oral evidence and testimony adduced at the trial of said cause, and the written briefs heretofore submitted to the court by the respective parties hereto arguing the evidence as well as the law upon the issues presented herein;

Now therefore, said motion for decree herein is granted, and

I.

It is considered, ordered and decreed that the United States is the Trustee and Guardian of the Confederate Tribes and Bands
108 of Indians known as the Yakima Nation of Indians;

II.

It is considered, ordered and decreed that the following described portion of the south bank of the Columbia river in the county of

Wasco, state and district of Oregon, was at the time of the treaty, always has been, and now is, one of the usual and accustomed fishing places belonging to and possessed by the Confederated Tribes and Bands of Indians known as the Yakima Nation, said south bank of the Columbia river being described as follows, to-wit: That certain part or portion of the south shore of the bank of the Columbia river beginning at the furthestmost point down stream of the removal of rock at the point on said river known as the head of Three Mile Rapids, or by the Indian name of Cum-Sucks, by the Government in the construction of the Celilo Canal, and extending thence up stream along the bank of said river, around the said point known on the engineers' map and in the evidence as Location Number Six, United States Engineers' Location, and around the said point of land known by the Indian name of Wah-Sucks, to where the shore line of the Columbia river meets the premises of Henry and Harriet Gulick, said Gulick lands being known as the W. $\frac{1}{2}$ of lot 2, Sec. 36, T. 2 N., range 13 east of the Willamette Meridian, and including therein the place where the evidence of this case shows Peter Jackson's scow fish wheel has been heretofore located, said south shore or bank being opposite Lot 3, in section 36, township 2 north, range 13 East, Willamette meridian, in said Wasco county, Oregon.

III.

It is further considered, ordered and decreed that the fishing rights and privileges to fish in common with citizens of the United States, and reserved by said Yakima Nation and guaranteed by the

109 United States to said Yakima Nation, in and by the so-called Yakima Treaty of June 9, 1855, for the use and benefit of said nation of Indians, apply in particular to all the rights, powers and privileges of the Indians in fishing in common with citizens of the United States at the said usual and accustomed fishing place on the south bank or shore of the Columbia river as above described, and said Indians are protected in the guarantee of said fishing rights and privileges for the purpose of enabling them to gather and catch fish for food, domestic, and other purposes.

IV.

It is further considered, ordered and decreed that said defendant, its officers, attorneys, agents, deputies, servants, employes and workmen, and all persons under their control, or under the control of either or any of them, and all persons claiming by, through, or under the authority, control, direction or instigation of said defendant company, its officers, attorneys, agents, servants, and employes, are and each and all of them are hereby perpetually enjoined from in any manner, or by any means whatsoever, interfering with, hindering or depriving the said Indians of the Yakima Nation or any one or more of said Indians of said Nation from using, exercising, or enjoying any or all the rights, powers and privileges of fishing in or at said usual and accustomed fishing place as hereinbefore de-

scribed, in accordance with and by the authority of the provisions of said Yakima Indian Treaty; and in case of disobedience hereto said parties subject themselves to the pains and penalties of law thence ensuing.

V.

It is considered, ordered and decreed that Sam Williams is not a ward of the United States Government in the sense that the
110 Government is required to and should interpose in his behalf, to protect his rights, if any, to the privilege of fishing at the location named herein.

VI.

It is considered, ordered and decreed that the Yakima Indians are not confined to their ancient and usual methods of catching fish, but are permitted and are to be encouraged to adopt the more modern, and advanced methods and means of prosecuting their fishing enterprises.

VII.

It is further ordered, adjudged and decreed that the said defendants, their agents, attorneys, servants, officers, employees and workmen, and all persons claiming by, through, or under them, or either of them, each of them be and they are hereby, under the pains and penalties which may fall upon them and each of them in case of disobedience, perpetually enjoined and restrained from in any manner interfering with, preventing or prohibiting the said Indians of the Yakima Nation, or any one of them, from erecting, maintaining and using temporary houses and buildings upon the following described lands, to wit: That certain portion of the rocks of the Columbia river opposite said lots 2 and 3, for the purpose of shelter and occupation while fishing during the fishing season, or for the purpose of securing fish during the said fishing season, and which above described lands are adjacent to and upon the said Columbia river, and to said usual and accustomed fishing place, and from hindering, preventing, or prohibiting in any manner the said Indians from ingress or egress to and from said lands above described, by means of paths and passageways along the banks of the Columbia river to the said usual and accustomed fishing place, and

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VIII.

It is further ordered, adjudged and decreed that said defendants and their clerks, agents, attorneys, servants, officers, employees and workmen, and all persons claiming by, through or under them or either of them and each of them be, and they are hereby, under the pains and penalties which may fall upon them and each of them in case of disobedience, perpetually enjoined and restrained from interfering with, preventing or prohibiting in any manner the use of

said Indians of said trails and means of ingress and egress to and from the usual and accustomed fishing place on said Columbia river, and from in any manner or by any means obstructing the use of said paths and passageways.

IX.

And it is further ordered, adjudged and decreed that the said defendant, its clerks, agents, attorneys, servants, officers, employees and workmen, and all persons claiming by, through, or under them, or either of them, each of them be, and they are hereby, under the pains and penalties which may fall upon them and each of them in case of disobedience, perpetually enjoined and restrained from interfering with, preventing or prohibiting in any manner, the pasturing by said Yakima Indians of their horses and their animals upon any lands adjacent and contiguous to said usual and accustomed fishing place on said river, which lands are open and unclaimed.

Done in open court this 31st day of July, 1916.

CHAS. E. WOLVERTON,
Judge of the Above-entitled Court.

Filed July 31, 1916. G. H. Marsh, Clerk.

111½ And afterwards, to wit, on the 4th day of September, 1916, there was duly filed in said Court, a Motion for order for Defendant to Show Cause for Contempt, and affidavit in support of said motion, in words and figures as follows, to wit:

112 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Motion for Order to Show Cause.

Comes now the plaintiff herein by Robert R. Rankin and Barnett H. Goldstein, Assistant United States Attorneys for the District of Oregon, and upon the duly verified affidavit of Don M. Carr annexed hereto and made a part hereof move this court for an order to show cause why the defendant Seufert Brothers Company, a corporation, and F. A. Seufert, as President of said corporation, should not be punished for contempt of court for violating and disobeying a lawful decree of this court made and entered on the 31st day of July, 1916,

as more fully and specifically set out in the said affidavit of Don M. Carr.

ROBERT R. RANKIN,
BARNETT H. GOLDSTEIN,
Attorneys for Plaintiff.

113 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Affidavit.

UNITED STATES OF AMERICA,
District of Oregon, ss:

I, Don M. Carr, being first duly sworn, depose as I say:

That I am now and for some time past have been the duly appointed, qualified and acting Superintendent of the Yakima Indian Reservation, residing at Fort Simcoe, the headquarters of said Reservation, in the State of Washington;

That I am fully acquainted with the proceedings in the above entitled case, and with the terms of the final decree herein and have acted as a witness herein and have attended the trial hereof;

That I am acquainted with that certain portion of the south bank of the Columbia River opposite Lot 3 in Section 36, Township 2 North, Range 13 East of the Willamette Meridian, which was by the final decree in the above entitled case declared to be an ancient, usual and accustomed fishing place of the Yakima Indians; that I have in person visited this south bank of the Columbia River opposite said Lot 3 on the 1st day of September 1916 and the 3rd day of September 1916 and have observed as follows:

The the defendant Seufert Brothers Company has anchored a fish wheel scow on the south bank of the Columbia River opposite said Lot 3, approximately the location formerly occupied by the fish wheel scow of Peter Jackson, a Yakima Indian, and a usual and accustomed fishing place protected by the decree rendered by the court herein on the 31st day of July, 1916.

DON M. CARR.

Subscribed and sworn to before me this 4 day of September, 1916.

[NOTARIAL SEAL.]

C. L. REAMES,

Notary Public in and for the State of Oregon.

My commission expires Dec. 9, 1916.

Filed September 4, 1916. G. H. Marsh, Clerk.

115 And afterwards, to wit, on Thursday, the 7th day of September, 1916, the same being the 57th Judicial day of the Regular July, 1916, Term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

116 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Order Adjudging Defendant Guilty of Contempt.

Upon the return of the order to show cause heretofore entered, and it appearing that service thereof has been had on said defendant, Seufert Brothers Company, a corporation, and upon F. A. Seufert, as president of said corporation, and the motion of contempt having been heard on the 7th day of September, 1916, the plaintiff appearing by Barnett H. Goldstein, Assistant United States Attorney, and the defendants appearing by A. S. Bennett, and testimony having been introduced and arguments of counsel for and in opposition thereto having been heard, the court finds, and

It is hereby ordered and adjudged that the defendant, Seufert Brothers Company, a corporation, and F. A. Seufert, as president of said corporation, are in contempt of court in disobeying the decree in the above entitled cause made and entered on the 31st day of July, 1916, and

117 It is further ordered that the defendant Seufert Brothers Company, a corporation, and F. A. Seufert, as president, pay the costs of this proceeding taxed in the sum of \$111.30.

Dated at Portland, Oregon, this 7th day of September, 1916.

CHAS E. WOLVERTON,
District Judge.

Filed September 7, 1916. G. H. Marsh, Clerk.

118 And afterwards, to wit, on the 30th day of January, 1917, there was duly Filed in said Court a Petition for Appeal, in words and figures as follows, to wit:

119 In the District Court of the United States for the District of Oregon.

No. 6760.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Petition for Appeal.

The above named Defendant, Seufert Brothers Company, a corporation conceiving itself aggrieved by the decree made and entered on the 31 day of July, 1916, in the above entitled cause, does hereby appeal from said Order and Decree to the Supreme Court of the United States for the reasons specified in the Assignments of Error which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the said Supreme Court of the United States.

A. S. BENNETT,
BENNETT & GALLOWAY,
Attorney- and Solicitor- for Defendant.

Dated this 27th day of January, 1917.

The foregoing claim of appeal is allowed.

CHAS. E. WOLVERTON,
District Judge.

Dated this 30th day of Jan'y, 1917.

120 UNITED STATES OF AMERICA,
District of Oregon, ss:

Service of the above and foregoing claim of appeal made this 30th day of January, 1917, is hereby accepted and acknowledged.

ROBERT R. RANKIN,
*Assistant United States Attorney for the
District of Oregon.*

Filed January 30, 1917. G. H. Marsh, Clerk.

121 And afterwards, to wit, on the 30th day of January, 1917, there was duly filed in said Court, an Assignment of Errors, in words and figures as follows, to wit:

122 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederate Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Assignment of Errors.

The Defendant, Seufert Brothers Company, a corporation, above named, praying an Appeal from the final Decree of this Court to the Supreme Court of the United States, assigns for error:

First. That the said District Court erred in holding and decreeing that the treaty with the Yakima Indians, under which said suit was brought, applied to territory outside of the territory ceded by said tribe to the United States in said treaty, and in holding that the said treaty gave to said Yakima Indians fishing rights outside of the territory so ceded in said treaty and especially in the territory on the South side of the Columbia River in the State of Oregon.

Second. That said court erred in not sustaining the Demurrer of the Defendant to the original Complaint in said action.

Third. That said District Court erred in not sustaining the Motion to dismiss said Original Complaint in said action.

Fourth. In overruling the Motion to dismiss said Amended
123 Complaint upon the ground that said Amended Complaint was not an Amended Bill, but was a substitution of a new cause of Complaint or suit and substituted entirely and wholly different plaintiffs and called into question wholly and entirely different interests from the party in whose behalf the original suit was brought.

Fifth. In overruling the Motion to dismiss the Amended Bill of Complaint in said action upon the ground that said Amended Complaint did not contain sufficient facts to constitute a valid cause of action or suit in equity against the Defendant.

Sixth. In refusing to dismiss said Amended Complaint upon the ground that the treaty between the Government and the Yakima Indians referred to in said Amended Complaint confined the said Yakima Indians to the exercise of fishing rights on the Washington side of the Columbia River, and that said treaty did not apply to the Oregon side of said river.

Seventh. That said District Court erred in the final Decree in said cause in holding and decreeing that the portion of the South bank of the Columbia River in the County of Wasco and State of Oregon, described in said Decree, was or is one of the usual and accustomed fishing places belonging to and possessed by the Confederate Tribes and Bands of Indians known as the Yakima Nation.

Eighth. In holding and decreeing that the fishing rights and privileges reserved by said Yakima Nation and guaranteed by the

Yakima Indian treaty of June 9, 1855, applied to the powers and privileges of the Indians in fishing at the place indicated or at any place on the South bank or shore of the Columbia River, and
124 in failing to hold and decree that said Yakima Indian treaty did not apply to the place in question or to any part of the South bank or Oregon shore of said Columbia River.

Ninth. That said District Court erred in holding and decreeing that the Defendants, its officers, agent, etc., were and should be enjoined from fishing at said place on the Oregon shore under the Yakima Indian treaty.

Tenth. That said District Court erred in holding, adjudging and decreeing that the Yakima Indians are not confined to their ancient and usual methods of catching fish, but are authorized to establish monopolistic devices like fish wheels on the premises of private parties and especially at said place on the Oregon shore.

Eleventh. In holding, decreeing, and adjudging that said Yakima Indian treaty gave to the said Yakima Indians the right to maintain houses and buildings on the premises of the Defendant on said Oregon side of the Columbia River and to pass over and along the Defendant's said premises on said Oregon side to reach said fishing ground, and in enjoining the said Defendant from interfering therewith.

Twelfth. In holding and decreeing in said Final Decree that the rights of the Yakima Indian tribe generally could be adjudicated in a suit commenced by the United States on behalf of Sam Williams alone, when the said Sam Williams had failed to establish that he was a Yakima Indian or a ward of the Government, and that he could claim any rights under said Yakima Indian treaty.

Thirteenth. That said Court erred in going outside of the
125 pleadings and the prayer of the Complaint in said cause and finding and decreeing the alleged rights of the Yakima Indians at an entirely different place from the one pointed out and described in the original Complaint and in the Amended Complaint.

Fourteenth. In failing to hold, find, and decree that Sam Williams and the Yakima Indians had no rights to fish under the treaty at the place in question on the Oregon side of the Columbia River and outside of the territory ceded in said treaty by said Yakima Indians.

Fifteenth. In failing to find, hold, and decree that the fishing rights of the Yakima Indians, reserved to them by said treaty were confined to the territory ceded by them to the United States therein.

Sixteenth. That said District Court erred in finding and holding that the Defendant, after the entering of said decree, had violated the same by fishing, himself, at one of the points mentioned in said decree and in exercising his rights to fish in common with the Indians at said point, and in adjudging him guilty of contempt therefor, and in not holding that he had a right to fish at said point, at least when not disturbing or interfering with the fishing of any Indians.

A. S. BENNETT,
BENNETT & GALLOWAY,
Attorney and Solicitor for Defendant.

UNITED STATES OF AMERICA,
District of Oregon, ss:

Good and sufficient service of the within and foregoing Assignment of Errors is hereby accepted and acknowledged at Portland Oregon this 30th day of January, 1917.

ROBERT R. RANKIN,
*Assistant United States Attorney for the
District of Oregon.*

Filed January 30, 1917. G. H. Marsh, Clerk.

126 And afterwards, to wit, on the 30th day of January, 1917, there was duly filed in said Court, a Bond on Appeal, in words and figures as follows, to wit:

127 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Bond on Appeal.

Know all men by these presents, that we, Seufert Brothers Company, a corporation of Oregon, as principal, and F. A. Seufert, of Multnomah County, Oregon, and Arthur Seufert, of Wasco County, Oregon, as sureties, are held and firmly bound unto the United States of America, as the trustee and guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as trustee and guardian of and ex Rel. Sam Williams, in the sum of Five Hundred Dollars, (\$500.00), to be paid to the said United States of America as such guardian and trustee for which payment we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of January, A. D. 1917.

Whereas the Appellants in the above entitled suit have prosecuted and are prosecuting an appeal to the Supreme Court of the
128 United States to reverse the Decree rendered and entered in said District Court for the District of Oregon on the 31st day of July, 1916.

Now therefore, the condition of this obligation is such that if the said Appellant shall prosecute said appeal to effect, and answer all

damages and costs if they fail to make said appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

SEUFERT BROTHERS COMPANY,

A CORPORATION,

[SEAL.]

By F. A. SEUFERT, *President*,

By ARTHUR SEUFERT, *Secretary*.

F. A. SEUFERT.

[SEAL.]

ARTHUR SEUFERT.

[SEAL.]

STATE OF OREGON,

County of Multnomah, ss:

F. A. Seufert and Arthur Seufert sureties named in the foregoing bond, being first duly sworn, each for himself says: That he is a resident and freeholder in the State of Oregon, and is worth the sum of \$500.00 over and above all his just debts and liabilities and exclusive of property exempt from execution.

F. A. SEUFERT.

ARTHUR SEUFERT.

Subscribed and sworn to before me this 30th day of January, A. D. 1917.

[NOTARIAL SEAL.]

JOHN J. BECKMAN,

Notary Public for Oregon.

My commission expires February 11, 1917.

The foregoing bond is approved this 30 day of January, A. D. 1917.

CHAS. E. WOLVERTON,

United States District Judge for the

District of Oregon.

129 UNITED STATES,

District of Oregon, ss:

Due service of the within is hereby admitted at Portland, Oregon, this 30th day of January, 1916.

ROBERT R. RANKIN,

Assistant United States Attorney for the

District of Oregon.

Filed January 30, 1917. G. H. Marsh, Clerk.

130 And afterwards, to wit, on the 14th day of February, 1917, there was duly filed in said Court, a *Præcipe* for Transcript of Record on Appeal, in words and figures as follows, to wit:

131 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians • and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Now comes the Appellant and Defendant in the above entitled cause and makes this, its *Præcipe*, indicating the portions of the record which it desires to be incorporated into the Transcript on such appeal and designates the portions thereof as follows, to-wit:

First. The original Complaint in such cause.

Second. The Demurrer to said Complaint.

Third. The Motion for dismissing said Complaint.

Fourth. The Order of the Court upon said Motion.

Fifth. The Amended Complaint, in said cause.

Sixth. The Motion to dismiss said Amended Complaint.

Seventh. The Order denying said Motion to Defendant.

Eighth. The Answer to said Original Complaint.

Ninth. The Answer to said Amended Complaint.

Tenth. The Decree in said cause.

132 Eleventh. The testimony of the witnesses Sam Williams, George Waters, Louis Simpson, D. F. Laughlin, W. H. Gates, T. A. Hudson, Amos Underwood, Tomar Handley, Pipeshire, George Tommy, L. A. McNary, John Y. Todd, J. C. Luckey, Lorens P. Jensen, E. B. McFarland, Lancaster Spencer, Dr. Shea-wa, Charlie Dick, J. H. Jackson, Harriet Gulick, George, Me-Min-Ocht, Robert Smith, Frank See Latsee, Bill Charlie, L. A. Whitcomb, Jake Thomas, Charles Wanassey, T. H. Johnson, Mrs. Gulick, Joseph Eastabrook, Jesse Mann, Jim Jackson, Sam Tanawasse, L. A. Schanno, Jerry Bruno, Smiskam Pan-Ne-Wink, Wallnuatum, Tul-lux Holiqualla, Albert Kuckup, & Sam Williams on the part of the Plaintiff; the testimony of Henry Gulick, J. C. Crawford, John Crate, Fred Smith, Charley Switzler, Peter Bruno, Ed Crate, George Snipes, J. T. Rorick, F. A. Seufert, Francis A. Seufert, Robert J. Gilmore, Frank Seufert, Jr., Mrs. Jennie Wellingham, Leo F. Brune, F. A. Seufert, Henry Guy Whipple, Henry Wickman, Francis A. Seufert, T. J. Seufert, Frank Seufert, Jr., and L. A. Schanno, as shown by Defendant and Appellant's proposed Statement lodged with the Clerk herewith.

Twelfth. Defendant and Appellant's Petition for Appeal.

Thirteenth. Defendant and Appellant's Assignment of Errors.

Fourteenth. The Citation on Appeal with acknowledgment of service.

Fifteenth. The bond for appeal, in this cause.

Sixteenth. The Order allowing said appeal.

Seventeenth. The Order approving said Bond.

36 SAM WILLIAMS, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Your name is Sam Williams?

A. Yes, sir.

Q. You are a full-blood Indian?

A. Yes, sir.

Q. Where were you born, Sam?

A. Yakima.

Q. You were allotted on the Yakima Reservation?

A. Yes.

Q. Where do you live now, Sam?

A. The Dalles.

Q. How long have you lived there?

A. 21 years.

Q. How long have you fished on the Columbia?

A. Lifetime.

Q. All your lifetime. When did you begin fishing with the scow shwheel?

A. 1910.

Q. You got a license, then, from the State, did you?

A. Yes, I had license. Me and Peter Jackson was partner at that time.

Q. Do you read, Sam? Do you know whether or not you ever got licenses of the State of Oregon 026 and 034?

A. Yes.

Mr. Rankin: I am going to offer these in evidence.

Court: 034 is for what year?

Mr. Rankin: 1913, your Honor. 026 is for 1914.

Mr. Bennett: There seem to have been some interpolations made in this. It seems to me they ought to be explained before it is admitted in evidence. The other one we do not object to.

Mr. Rankin: I will save that one, and offer it when Mr. Opsund is on the stand.

37 No. 0-34 received in evidence, and marked "Government's Ex. 7."

Q. Did you have a scow fishwheel license for 1910 and 1911?

A. I had a license for 1910.

Q. I show you, Sam, Government's Ex. 1, Application for 1910, or fishing license.

A. Yes, sir.

Q. Government's Exhibit No. 2, application for 1911?

A. 1911, yes.

Q. Did you get licenses those years?

Court: That shows he got licenses.

Mr. Rankin: No, these are applications.

Q. Did you get licenses for those two years?

A. What is the number?

Q. For 1911?

A. 1911, no.

Q. Didn't you get a fishing license like that?

A. I don't believe—I don't know—I don't think—

Q. Before you fished at Three-mile with a scow fishwheel, how did you fish, Sam?

A. Gill-net.

Q. Did you fish any other way?

A. No, I didn't fish any way only just gill-net in the first place. The first time, 1906-07 and '08, fish with gill-net; sell my fish to Seuferts.

138 Q. Who fished there before you did?

— Nobody but Indians.

Q. What Indians fished there before you did?

A. Charley Wasco—he is dead now—right on that point.

Q. Did Seufert object to your fishing there with the scow fishwheel?

A. 1912.

Q. That is the first time he objected?

A. Yes.

Q. When did he next object?

A. 1913.

Q. What did he do that year, Sam?

A. Well, he turned loose my scow, and I tell him, Was that your land?

Q. Was Seufert there?

A. That is what I say. I tell him, "Have you got paper for this point?" He says, "That don't make no difference." Not Seufert, but his boy Frank. Well, now, don't matter—"We want you to get out of here. We will give you five minutes' time to get out." I tell him "Show your paper." He says, "It don't make no difference. You have to get out." I tell him "We got license on this point." He says "It don't make no difference. You have to get out. We will give you five minutes' time."

Q. What did he do, Sam, in 1913?

A. It was all turned loose when I come back. I come down to town. When I got back, there was three or four men up there watching my scow—when I got back, just one rope holding to drift down.

Q. Did you put the scow back there?

A. We took it, tie it up some place—tied it on island.

Q. You say you tied it on an island?

A. Yes.

Q. 1914, that was last year, did Seufert object to your fishing there then?

139 A. Yes.

Q. What did he do last year?

A. He did that last year, too.

Q. What did he do?

A. He turned loose.

Q. When did he first turn it loose, do you remember?

A. Well, all of them—I wasn't there, but the boys, when I got back it was all loose again—torn cable; it was loose on the island. We dropped our anchor again to hold the scow, and drift down against a rock. We laid there, and then the scow drift down, cut all to pieces, like, clear down, we tie him up. The scow was all to pieces, upside down.

Q. That was after they turned it loose?

A. Yes.

Q. What means of support have you? How do you live?

Objected to as immaterial.

Objection overruled.

Q. How do you live, Sam? How do you earn a living? Where do you get money from?

A. I sold my land up at Yakima, where I get my money.

Q. And how else do you get money, Sam? How do you make a living? How do you live? What do you eat off?

A. Well, I been tried fishing to make my living.

Cross-examination.

Questions by Mr. Butler:

Sam, when did you first commence to fish? How long a time ago did you commence to fish?

A. Lifetime.

140 Q. Where?

A. Down below.

Q. Down where?

A. Down below.

Q. Where?

A. I commenced from Oak Point, Cathlamet—do you know the place? This side of Astoria.

Q. How long a time ago has that been, Sam?

A. Oh, long time.

Q. Did you fish there a long time?

A. Yes, I been fishing all along with gill-net, come right up Cascades.

Q. Now, this point that you have been having trouble with Mr. Seufert over, how high is that above the water there?

Mr. Rankin: At what time?

Q. Any time.

A. Well, the overflow——

Q. Well, when it doesn't overflow.

A. Always. Pretty near every year.

Q. When water low——

A. Low water.

Q. When water low, how high is it?

A. When the low water of year, about—maybe about 30 or 40 feet, pretty low water.

Q. You can't fish with gill-net then, can you?

A. No.

Q. When was the first time you ever fished along the river there?

A. 1910, I fished, me and Jeter Jackson. Yes, fished there, me and Peter Jackson was partner at that time.

Q. When did you fish over on Judge Rorick's land across the river?

A. I fished that in 1912.

Q. 1912?

A. Yes, when my scow float down once.

141 Q. You had Judge Rorick's fishing place rented that year, didn't you?

A. Yes, sir, I rent it. I didn't fish very long.

Q. That is on the Washington side, isn't it?

A. Yes, I fish that little while, then I come over.

Q. And Mr. Rorick made you quit, didn't he?

A. Yes, we quit.

Q. You didn't claim any Yakima rights there, treaty rights, on the Washington side, did you?

A. No, they tell me that—

Q. Well, then, when did you commence fishing on the Oregon side?

A. Right along since 1911.

Q. Since 1911?

A. Right along.

Q. That was the first time?

A. 1910 was the first time I fished there.

Q. What did you fish with there? What kind of fishing appliances did you have?

A. Fishwheel. Me and Peter Jackson was partner at that time.

Q. Who bought the license at that time—paid for it?

A. I don't know. Maybe Peter Jackson—of course, I always gave him the fishing together; we took the fish to Seufert.

Q. Who built the scow?

A. Me and Peter—Peter Jackson.

Q. Who furnished the material for it?

A. We bought it, me and Peter Jackson. I paid fish for it.

Q. Didn't Mr. Seufert furnish the material for that scow?

A. Well, part of it, yes, for Peter's side, and I pay for myself.

Q. For Peter Jackson—isn't that right?

A. Yes, and I paid on my side, half and half.

Q. Mr. Seufert furnished the material, didn't he, for the scow?

A. Well, yes, for Peter Jackson, he bought it and pay fish for it.

Q. And furnished the money for the license?

A. Well, I don't know. We paid fish for it.

142 Q. You paid fish to Mr. Seufert for it, didn't you?

A. Yes, I think so. I don't know. Peter knows it, all about it.

Q. Peter was the man that was doing that fishing?

A. Well, I gave him chance to figure up on the fish, what he been selling for it.

Q. Peter made the deals with Mr. Seufert?

A. Yes.

Q. And Peter got the license, didn't he?

A. Maybe. I don't know. He never told me.

Q. What right you had there you got from Peter, didn't you—from Peter Jackson?

A. Yes.

Q. That is correct, isn't it? Isn't that right? Isn't that true?

A. I don't know if he got it or not, Peter.

Mr. Rankin: That is a conclusion of law. You understand that.

Q. Now, do you know Henry Gulick?

A. Yes, I know him.

Q. He is a white man lives there close?

A. He is white man, got Indian woman.

Q. Yes. Didn't you fish on his license in 1910?

A. No.

Q. Or on his land, I mean?

A. No, he ain't got no land.

Q. He hasn't? Well, didn't you fish with his permission there in 1910?

A. 1910, yes, we fished outside. I don't know if we fish his land or not, on the island.

Q. You asked him to let you fish there then, didn't you, and he said you could?

A. We asked him, yes, but I don't know if it is his or not.

143 Q. And that is a different place from where you say Mr. Seufert cut your scow loose, isn't it?

A. Well, that is the same island.

Q. But it is a different point, isn't it—different place?

A. It is not different, but the same island, same part of it.

Q. But it is different from where you tried to tie up your scow, isn't it?

A. Well, different, yes, different place, but it is the same island.

Court: Different place on the same island?

A. Yes.

Q. How far away? What is the difference in the distance, do you know?

A. It is all island. I don't know how far.

Q. How long a distance?

A. I don't know how long, but I know it is the same island.

Q. Up stream or down stream?

A. Up stream.

Q. Now, do you know where the Government blasted away a point up there?

A. Yes, they been blasting.

Q. How far is that above the point that you are claiming now? How far is that above it?

A. A little above, a little ways.

Q. About how far?

A. About 30 steps from the point and along point.

Q. About 30 steps?

A. Yes.

Q. Now, then, where you fished in 1910 was above this point that we are talking about, wasn't it?

A. We fished below the first time, and high water we move up.

Q. That was 1910?

A. In 1910 we fish above point—fish above, and below high water, where Peter Jackson is fishing now.

Q. Where Peter Jackson is fishing now?

A. Yes.

Q. Different place from this point?

A. It is the same point, same island.

144 Q. Now, Sam, when did you go over on the Washington side to fish, then?

A. What?

Q. Do you remember when you went over to the Washington side to fish?

A. One time. You know I don't fish there long. When it come high water I got out; I come back again; because I tell you me and Peter Jackson make a bargain, he will fish one year Washington, other fish in Oregon; we make bargain, me and Peter Jackson, in the first place, nobody else was fishing on that point but me and Peter.

Q. Nobody else was fishing at that point, you say?

A. No, sir.

Q. Nobody had been fishing there?

A. Well, I know that Charley Switzler fished there for a little while; but he never fished there—he fished a little while and then he quit, it is pretty high water.

Q. And when you came back over, now from the Washington side, across from Mr. Rorick's place, where did you start to fish then?

A. Away below.

Q. Away below there?

A. Yes, right near the old erib, and I get both cribs.

Q. And no Indians have been fishing there before at this place, have they?

A. Well, I don't know. They been fishing there. That is little fishing ground all through there.

Q. I mean this place, did you ever know of any of them? They didn't fish there, did they?

A. What?

Q. They didn't fish there before, did they?

A. No, I didn't see nobody fish.

Q. Where were you born, Sam?

A. Cowlitz.

Q. Cowlitz county?

Mr. Rankin: Cowlitz Indian Reservation.

145 Q. How long have you been living in Oregon?

A. On the Columbia?

Q. Yes, in Wasco county, Oregon—The Dalles?

A. 21 years.

Q. How old are you, Sam? How many years?

A. 58.

Q. 58. And you were born in Cowlitz, Washington?

A. Yes.

Q. How long did you live in Cowlitz?

A. Well, I didn't live very long, then I come down Columbia, and fish right along.

Q. Well, how long did you live at Cowlitz—in Cowlitz?

A. Not very long.

Q. You don't know?

A. Well, I live—born up to Cowlitz, then I come down and fish in the Columbia right along.

Q. How many years old were you when you left Cowlitz?

A. Well, I don't know. I was pretty young—a young fellow able to do fishing.

Q. Where did you go?

A. Fished right out in the Columbia river.

Q. Where?

A. Down at Oak Point, Cathlamet, all the way Cascades coming up this way; then up to Wasco fishing. That is the only business I do.

Q. Well, how many years old were you when you came up to Wasco?

A. Well, I don't know.

Q. You don't know how many years old you were when you left Cowlitz?

A. No.

Q. Were you 30 or 40 years old when you came to Wasco?

Court: He says he has been there 21 years, and he is 58 years old. I presume that will fix it. Sam, what tribe of Indians did you belong to first?

A. Cowlitz.

Court: Were you a Cowlitz Indian?

A. Yes.

146 Court: You belonged to the Cowlitz tribe?

A. Yes.

Court: Not the Yakima tribe?

A. Well, my father was a Yakima. My mother was a Cowlitz. That is the way.

Court: You were born at Cowlitz?

A. I was born at Cowlitz, but my father, he was Klickitat—Yakima. That is the way I got right to Yakima. I am half Yakima and half Cowlitz.

Court: That is the way you got a right to your land on the Yakima?

A. Yes, sir.

Court: Now, you said that you did some fishing in 1906 and 1907?

A. Yes.

Court: Where was that?

A. That is at the point we were talking about, a little above eddy there.

Court: At the same point?

A. At the same point, but a little above, at the eddy.

Court: You fished there in 1906-07 and '08?

A. Yes, fished there with gill-net. Nobody was fishing at all there—nobody—no Indian and no white man. Indian was fishing out on the point with dip-net—Charley Wasco. That is the point they call it Comsooks—Indian name.

Court: That is this same point?

A. Yes, Comsooks. That is the Indian name, dip-net.

Court: What did you call that point?

A. Comsooks.

Court: I didn't get that?

147 A. You ask Mr. Dorrington. He will know that.

Mr. Rankin: Say it, Sam, again.

A. Comsooks. That is the Indian name. That is the fishing ground. The same No. 1 and No. 2, all the same, that is the Indian name.

Q. When did Wasco Charley die? How long has he been dead?

A. Last year. Last winter.

Q. You and Wasco Charley were not very good friends, were you?

A. I am good friend to him.

Q. You are good friend to him now?

A. Yes sir. Not now, but when he was alive.

Excused.

JESSE MANN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Your name is Jesse Mann, and you reside at The Dalles, Oregon?

A. Yes, sir.

Q. Are you associated with Sam Williams and have been for some time past?

A. Yes.

Q. How long?

A. Since the early part of 1912.

Q. What has been your business with him?

A. Fishing.

Q. Where about?

A. On the Columbia River there.

Q. What particular point?

A.

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A. Well, it is on that point about three miles above The Dalles.

148 Q. Where Sam has had his scow fish wheel?

A. Yes sir.

Q. Have you met with any interference up there?

A. In what way?

Q. Has anyone attempted to prevent your fishing?

A. Not me, but Sam.

Q. Well, I meant you and Sam in your joint business there.

A. Yes.

Q. Who?

A. Seufert.

Q. When did they first interfere with you?

A. When I first seen it was in 1913.

Q. What time do you remember, Mr. Mann?

A. Yes, sir, it was, I think, right about May first. It was May first or second—I wouldn't be sure.

Q. What was the occasion of that interference, Mr. Mann?

A. What is that?

Q. What happened at that time?

A. Well, at that time I was about a quarter of a mile below that place.

Q. What do you mean by that place?

A. Well, from that point where his scow is located; and I seen Seufert's men—supposed to be them. They come down. There was four men on Sam's scow at that time. Sam, I suppose, had went to town. I saw them turn it loose. It just drifted down stream just a little ways there alongside the rock.

Q. When was the next interference, Mr. Mann?

A. It was 1914.

Q. What time was that?

A. It was on May first.

Q. What was the interference then?

A. Well, that was the time when I saw them—I will tell you how it was. Seufert—the water got high and run in a hole there up above. His wheel was sitting there and Sam's was sitting

149 right below that point. Well, on May first in the morning Sam started to move his up. There was just two of Seufert's hired men there at that time. In about half an hour they were out on the island. Sam's was almost covered up with water. It was really too high to fish there. About half an hour later there comes a motor boat down with a lot of Seufert's men and I think it was him in there too.

Q. What happened?

A. They went over there and they turned that scow loose.

Q. Whose scow?

A. Sam's. And Seufert moved his down.

Q. Then what else happened? What was the next bit of interference, if any, next time they interfered, if they did?

A. There hasn't been any more interference in 1914.

Q. Is that the only time you had any interference just once in 1914?

A. That is all I know of.

Q. Now, wasn't there another attempt in 1914? Didn't they cut the scow loose again?

Mr. Bennett: That is pretty leading.

Mr. Rankin: I was just inquiring, Judge. All right.

Q. Now, have you ever heard Seufert or the officers of the Seufert Bros. Company ever threaten to turn the scow loose if it was put in there, or not?

A. No, I never have been around none of them men to talk with them.

Q. Are you fishing there now?

A. No, sir.

Q. Why?

A. Because Seufert's scow is in the way. We cannot move in there.

Q. When did Seufert first put his scow in this place that is claimed by Sam Williams?

A. 1914.

150 Q. What time?

A. It was put in at the same time they had that scramble.

Q. When was that about, do you remember?

A. About the first of May.

Cross-examination.

Questions by Mr. Galloway:

— You live with Sam Williams, don't you?

A. Yes, sir.

Q. And work for him?

A. Yes, sir.

Q. You don't do any fishing independent of him?

A. No, sir.

Q. Have you any interest in Sam's fishwheel?

A. No, sir. None whatever.

Q. You don't own any part of it? You are a white person?

A. Yes, sir.

Q. No Indian in you?

A. No, sir.

Q. Now, do you know Charlie Switzler?

A. I do.

Q. Where did he fish in 1913?

A. He never fished on that point. He was working for Seufert. I know that. But in 1914 he fished on the Washington side on Rorick's crib.

Mr. Rankin: Rorick's crib?

A. What they call Rorick's crib.

Excused.

DON M. CARR, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

151 —. Your name is Don M. Carr, you are Superintendent of the Yakima Indian Reservation with agency at Fort Simcoe, Washington?

A. Yes.

Q. Do you know Sam Williams?

A. Yes, sir.

Q. State whether or not he is allotted on that reservation.

A. He is a Yakima.

Q. Do you know when he was allotted, Mr. Carr?

A. Not the date, no, sir. The records will show. I haven't the date in mind.

Q. Have you the records that will show?

A. Yes, they are there.

Court: Do you deny that he was an allottee?

Mr. Bennett: What is that, your Honor?

Court: Do you deny that Williams was an allottee on the Yakima Reservation?

Mr. Galloway: No, we are not denying it.

Court: That is sufficient.

Q. Have you been at The Dalles?

A. Yes, sir.

Q. Recently?

A. Yes.

Q. Have you observed this fishing point claimed by Sam Williams?

A. Yes, sir.

Q. Is there any one occupying it, or has there been any scow occupying the present place?

A. You mean during the present fishing season?

Q. Yes, now.

A. Yes, sir.

Q. Whose scow is it?

A. The scow is being operated by Charlie Switzler and Pete Bruno. The ownership of it is presumed to be in Mr. Seufert.

Q. Did Mr. Seufert state to you whether it was or not?

A. No, sir, he didn't claim to own the scow.

Q. When did you observe that scow?

152 A. The scow was put in place, was in place at noon on the day the fishing season opened.

Q. That is May 1, 1915?

A. Yes, sir. Then the wheel was dropped about 30 or 45 minutes after noon.

Q. Did it fish then—proceed to operate?

A. It was operated, yes, sir.

(Cross:)

Q. This Switzler and the other men who were operating the wheel, are they Indians or white men?

A. They are Indians.

(Redirect:)

Q. What is the status of those men? Are they Yakimas?

A. Bruno is Warm Springs.

Q. How about Switzler?

A. Switzler is Yakima.

Excused.

GEORGE WATERS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Your name is what?

A. George Waters.

Q. Where do you live, Mr. Waters?

A. Toppenish, Indian Reservation.

Q. To what tribe do you belong?

A. Klickitat.

Q. Are you allotted or not upon the Yakima Indian Reservation?

A. Yes, sir.

Q. How old are you, Mr. Waters?

A. Seventy-four.

Q. Where were you born?

A. Mouth of Willamette river.

Q. Mouth of the Willamette river?

A. In Oregon, yes.

153 Q. How long have you been allotted upon the Yakima Indian Reservation?

A. I don't remember what year I went to Yakima; perhaps 1859.

Q. 1859?

A. Yes. And from that time I stayed there all the time.

Q. Do you know Sam Williams?

A. Yes.

Q. Do you know the place where Sam Williams has since 1910 fished on the Columbia river?

A. Yes.

Q. What is that place called?

A. What called? Indian name?

Q. Yes.

A. Oh, it was a long time ago we used to call it Lone Tree.

Q. Lone Tree?

A. Yes.

Q. Indian name was Lone Tree?

A. Yes, used to be.

Q. Do you know of your own knowledge, Mr. Waters, whether the Yakima Indians have fished at Lone Tree?

A. Oh, yes, they used to go there on either side, on Washington side and Oregon.

Q. Now, Mr. Waters, I want you to tell the court all that you know about how the Yakima Indians came down there to fish. Just tell the court all about that.

A. Well, they used to use that Indian net in years ago.

Q. You are a Klickitat, you said?

A. Yes.

Q. The Klickitat is one of the tribes of the Yakima Nation, is it not?

A. Yes.

Q. Did they fish there?

A. What?

Q. Did the Klickitat Indians use to fish there too?

A. Yes, they come.

Q. Do you know about the Skin-pah tribe?

A. Yes.

Q. State whether or not they fished there.

154 A. Yes, they used to be the same way.

Q. That is over on the Oregon side of the Columbia river that we are talking about.

A. Well, you say Skin-pah?

Q. Yes. But I say these tribes that I am mentioning are we to understand you as saying that they fished on the Oregon side there at Lone Tree?

A. Yes.

Q. And the Wish-hams, do you know the Wish-ham tribe?

A. Yes.

Q. Where did they fish?

A. On those rocks, them Wish-Ham people they used to go to Wasco and fish there. Both sides they used to go.

Q. Did you ever fish at any of those points yourself, personally?

A. No. I just looked at it.

Q. You have seen them?

A. Yes, sir.

Q. You have seen Yakima Indians fishing there?

A. Yes, sir.

Q. What do you say, Mr. Waters, about the Yakima Indians coming down? Did they ever go across the Columbia river?

A. Yes.

Q. What would they go across the Columbia river for?

A. Well, after salmon.

Q. After salmon?

A. Yes.

Q. Would they ever come inland, that is this side of the river, away down into the Oregon side?

A. Yes.

Q. What for?

A. For salmon.

Q. Well, I mean after they crossed the Columbia river, would they ever go down in the Warm Spring country?

A. Yes, they used to go to Warm Spring.

Q. What for?

A. Oh, to visit one another, you know.

Q. To visit?

A. Yes.

155 Q. Would any of the Warm Spring Indians go north?
A. Yes, they used to go to Yakima.

Q. Tell the Court about whether these Indians visited each other back and forth, or not.

A. That is the way they used to visit each other, each nation is always friends, just the same on salmon all free for the Indians. Never buy anything for own use, from Wasco up to Celilo.

Q. From Wasco up to Celilo?

A. Yes.

Q. Did you know Wasco Charlie?

A. Yes.

Q. How long had you known him, Mr. Waters?

A. Oh, since eight years ago.

A. Eight years ago?

A. Yes.

Q. Did you ever see him fishing at Lone Pine?

A. Yes. Yes, he used to fish.

Q. How long ago was it?

A. At that time I saw, but before that long time he used to fish. Court: What tribe was he?

A. Wasco.

Court: He was a Wasco Indian?

A. Yes.

Q. Do you recall what particular Yakima Indians you have seen fishing at Lone Pine?

A. What?

Q. What are the names, if you remember, of any of the Yakima Indians whom you saw fishing at Lone Pine?

A. Well, I cannot call their names, but them Indians used to fish there. I don't remember who, but them Indians.

Q. You don't remember their names?

A. Yes, both Yakima and Klickitats.

Q. Old Klickitats?

A. Yes.

Q. Where would the Indians go for their early fishing, Mr. Waters?

A. They first used to go on the other side.

Q. What do you mean by the other side?

156 A. The Oregon side—Wasco; and when high water come they go back again on the other side just the same, them Wasco tribes used to go when high water comes, used to go on

Wish-ham.

Q. Did the Klickitats or any of those bands of the Yakimas think

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Court:

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that they could only fish on the Washington side of the river or did they think that they could also fish on the other side?

A. No, on both sides, on Oregon side and Washington side.

Cross-examination.

Questions by Mr. Butler:

— Where do you live?

A. Toppenish.

Q. How long have you lived there?

A. Twenty-six years I moved there. I used to live Fort Simcoe.

Q. How long did you live at Fort Simcoe?

A. Since 1859.

Q. Where did you live before that time?

A. White Salmon.

Q. How long did you live at White Salmon?

A. Four years.

Q. Then where did you go?

A. To Fort Simcoe to the Reservation.

Q. Lived there how long?

A. Yes, long time.

Q. How many years?

A. Oh, it is fifty—about 56 years ago.

Q. You lived there 56 years, Fort Simcoe?

A. Yes, all time there.

Q. How long now do you say you have lived at Toppenish?

A. 26 years. Since I got allotment I moved out.

Q. You lived four years at White Salmon?

A. Yes.

Q. 56 years at Fort Simcoe?

A. Yes.

Q. 26 years at Toppenish?

A. Yes.

Q. How old are you?

A. 74.

Court: Make him about 86 years old.

A. No, you make mistake.

Redirect examination:

Q. What is it, Mr. Waters? Explain it.

157 A. 1859 I came to Yakima Reservation, Fort Simcoe, but I just meant since allotted 26 years ago. You made mistake.

Q. Then, Mr. Waters, you said you lived four years where?

A. White Salmon.

Q. Then you said 56 years. Where was that?

A. On Reservation.

Q. On the Reservation?

A. Yes.

Q. That makes 60 years. And you say 26 of those years you have been allotted.

A. Yes.

Q. Then 26 of those 56 years that you have been on the Reservation you have been allotted?

A. Yes.

Q. You don't mean to say you have been up there 56 years and 26?

A. No, no.

Recross-examination:

Q. How old were you in 1859?

A. I don't know.

Mr. Rankin: That is a matter of calculation.

Mr. Butler: I want him to calculate.

A. I don't remember what time I was 50. I was 14 years of age since the treaty.

Mr. Rankin: You were 14 years of age at the time of the treaty?

A. Yes.

Court: That would be in 1855.

Q. When was the treaty?

A. 1855.

Examination by the Court:

Q. Do you remember when the treaty was made?

A. Yes.

Q. Well, now, you know the Columbia river is the boundary of your territory?

A. Yes.

158 Q. What did you think about the boundary as to your rights to fish — the Yakima Indians—where did they have a right to fish, as to the boundary?

A. Well, of course, the treaty says, little by little will be Indian fishery, and rocks, as long as the Indian lives, fishing place rocks.

Q. Well, did you understand now that the Yakima Indians had a right to fish on the south side of the stream, the Columbia?

A. Yes.

Q. You understood that, did you?

A. Yes.

Q. That the Yakima Indians had a right to fish on the Oregon side of the Columbia?

A. Yes.

Q. Did the Indians fish there all the time when they wanted to?

A. That is the way Indians used to be altogether, not like you call Oregon side, but both sides all.

Q. All fish on both sides?

A. Yes.

Q. If the Yakima Indians wanted to fish on the Oregon side they came over and fished?

A. Yes.

Q. The Wasco Indians made no objection?

A. No. Just the same.

Q. The Wasco Indians didn't object?

A. No.

Q. When the Wasco Indians wanted to fish on the Washington side they went there and fished?

A. Yes.

Q. The Yakima Indians didn't object to their fishing there?

A. Yes, sir.

Redirect examination:

Q. Mr. Waters, the tribes were friendly?

A. Friendly.

Q. Always friendly?

A. Always, always.

Q. You shared each other's fishing places?

A. Yes.

Q. You speak the same language?

159 A. No, no. Wish-ham they talk other language, Wish-ham and Wasco, but we understand each other.

Q. You understand their language?

A. Yes.

Recross-examination:

Q. The Indians were fishing all up and down the Columbia river, weren't they?

A. Yes, sir, all up and down.

Q. Clear all up?

A. Yes.

Q. Not one particular place, but all up and down the river?

A. Yes, yes.

Q. On all the rocks and points?

A. All the rocks and points.

Q. How were they fishing? What were they fishing with?

A. They used to have dip nets.

Q. Dip nets?

A. Yes.

Q. When was that?

A. Oh, a long time ago. A long time ago they made that kind.

Q. You don't remember the names of any Indians you saw fishing up and down there?

A. Yes.

Court: He said a while ago he couldn't recall the names.

Redirect examination:

Q. Mr. Waters, if I, a long time ago, said I was going to Lone Pine, would you know where I was going?

A. Yes.

Q. What did they do at Lone Pine?

A. Fishing.

Q. That was a regular fishing place, was it?

A. Yes, they used to camp out there, fishing.

Q. Did the Indians have certain Indian names for all those particular fishing points?

A. All the names Indian names.

Q. Lone Pine, as I understand you, was one of those old Indian fishing points?

A. Yes.

160 Recross-examination:

Q. Now, aren't there thousands and thousands of salmon in the river, and they caught them up there about the falls more than anywhere else then, in the earlier days?

A. What do you mean?

Q. Wasn't there more salmon up at the falls and didn't they catch them there easy at the falls, in the early days?

A. Oh, yes, yes, yes. Easy.

Q. Clear up there?

A. Yes.

Q. How far from the falls was the Lone Pine?

A. From which fall do you mean?

Q. The Celilo.

A. I don't know how many miles—12 miles or more—I don't know how far.

Q. You don't know?

A. Yes, how many miles.

Excused.

161 LOUIS SIMPSON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Charley Pitt sworn as Interpreter.

Q. What is your name?

A. Louis Simpson.

Q. How old are you, Louis?

A. 82, he thinks. Something like 82.

Q. Where were you born?

A. At Salmon Fishery, Wish-ham up here.

Q. What is your tribe?

A. I am a Wish-ham—Wish-ham tribe.

Mr. Rankin: That, as the treaty shows, is one of the confederated tribes of the Yakimas.

Q. Are you allotted on the Yakima Indian Reservation?

A. Yes.

Q. How long did you live on the Columbia river?

A. Something like 13 years he lived there.

Q. Was that after he was born there?

A. Yes.

Q. What did he do?

A. He says, I fished with my father on both sides of the river.

Q. Does he know a point on the river called Lone Pine?

A. I know, yes, I know all of that.

Q. What Indians fished at Lone Pine?

A. He says that the Wascos fish and the Wish-ham fish and other tribes around about.

Q. Did they fish right there at Lone Pine?

A. Yes, from Lone Pine right up the river up and down.

Q. Ask him to tell the Court how the Indians would fish there, whether it was friendly or not, and how long they would fish at this place before they would move to another, and why they would move. Have him tell the Court about those things.

A. They fished with dip nets and spears until fall. Then
162 they moved to other places to fish.

Q. Would the Yakimas fish on the south side of the river?

A. Yes. They fished on the south side of the river, yes.

Q. How about the Wascos, would they just fish on the south side, or would they fish on the north side of the river too?

A. Sure, he says, that they fished on the Washington side too.

Q. Ask Louis if a man took up a place on the river to fish, if any one could come in and take it away from him, or did he have a right to stay there until he gave up the place?

A. A man that discovers a fishing place, why that is his; that is his fishing place unless he gets enough; then others can come and fish at his privilege.

Q. At his privilege?

A. Yes.

Q. Did Louis himself ever fish at Lone Pine?

A. I fished with the dip nets, yes, and speared too at that place.

Q. Did his father ever fish at Lone Pine?

A. Yes, as I have stated, my father fished there and taught me to fish with him.

Q. There at Lone Pine?

A. At Lone Pine, yes.

Q. When was it that Louis first fished there?

A. He says while I was a young boy growing up my father and I fished.

Q. Does he know when the treaty was made?

A. What treaty do you mean?

Q. The treaty with the Yakima Nation. When was the treaty with the Yakimas?

A. Yes, I remember. I remember that there was such a thing as treaty made.

Q. Does he remember what year it was in?

A. Says I cannot tell the exact number of years when the treaty was made, but the treaty was made—I was there present—the treaty was made by Governor Stevens.

Q. Ask him if he fished at Lone Pine before that treaty was made?

163 A. He says, I have fished with my father before the treaty, and also other Indians have fished there long before the treaty.

Q. Has he fished there or any of the Yakima nation fished there after the treaty was made?

A. Yes, the Yakima Indians fished after the treaty there.

Q. Does he know Wasco Charley?

A. I do.

Q. How long had he known him?

A. I knew him when a small boy. I am a little older than he was. I knew him when he was a small boy.

Q. Where did Wasco Charley fish, if he knows?

A. Wasco Charley fished at the Lone Pine, just where he was found dead, close to his home, that same place.

Q. Where he died the last year?

A. Yes.

Q. Does Louis know Sam Williams?

A. I do.

Q. How long has he known Sam Williams?

A. Oh, I have known Sam Williams something like twenty years.

Court: How old was Wasco Charley when he died?

Q. Just ask the witness.

A. I am not able to say how old he was exactly, but he was pretty old.

Q. Charley Pitt, you knew Wasco Charley?

Interpreter: I did.

Q. Do you know how old he was—for the benefit of the Court?

A. No, I don't.

Court: That is enough. He said he was pretty old.

Q. Ask Louis if he ever saw white men fish at Lone Pine?

A. A white man never fished there until the white men become numerous. Then white men fished.

Q. When was the last time that Louis fished at Lone Pine?

A. Very near 50 years, the agent took us to Yakima, and I haven't had chance to come back to do any more fishing.

Cross-examination.

Questions by Mr. Bennett:

164 —. Ask him if he was ever back there after the agent took him over to the Reserve.

A. Yes, I have been over frequently, over on that side and caught salmon and went home after I had been out on Yakima.

Court: Ask him if he fished there.

A. Yes, I catch them with spear.

Q. Ask him when was the last time he was at Lone Pine.

A. I hardly know, but something like 50 years.

Q. How much?

A. Something like 50 years, he thinks. He says, I don't hardly know.

Q. Now, ask him if he claims to have ever seen Wasco Charley fish at Lone Pine.

A. Yes, I have seen him fish with a dip net.

Q. Ask him how long ago that was.

A. I don't remember. Yes, Charley has fished there pretty near all his life, but I don't know exactly when it was the last time.

Q. Ask him if the last time he ever saw Charley fish there was before he moved over to the Reserve or since.

A. I have seen Charley catch salmon, after we moved out to Yakima I have seen him catch salmon there.

Q. Ask him about when was the last time that he claims to have seen Wasco Charley catch fish there.

A. Oh, I hardly know. Something like forty years, maybe, was the last time I saw him.

Q. Ask him if that was Wasco Charley's regular place to fish.

A. Yes, that Lone Pine fishery was his home. That was his fishery and Indians went there and fished with him. That was his home.

Q. Ask him if he means that Wasco Charley would let other Indians come there and fish.

A. Yes, he says just what I have said.

Q. Ask him if the Wasco Indians would sometimes let the Yakimas fish all along up and down the river on the Oregon side.

A. Yes, they did. They did.

Q. Ask him if they fished all the way from The Dalles up to Celilo in that way.

165 A. No, they used to fish from this Lone Pine up the river, all along up on the river up—nothing below.

Q. Clear up to Celilo?

A. Yes, clear up to Celilo.

Q. Ask him if that was about 12 or 15 miles.

A. I couldn't say. Something like—oh, it is over ten miles he thinks.

Q. Ask him if they let them fish in the same way down at the Cascade Locks.

A. Yes, that is the way they fished, yes.

Q. On both sides of the river down there?

A. Yes, both sides of the river, yes. He says they fished on Celilo side, and they fished on the Skin side. Skin is Indian name of the opposite side of Celilo.

Q. Ask him if it was the same way down at Cascade Locks. Ask him if it was the same way down at the Cascades they fished.

A. You mean both sides of the river?

A. Yes. Ask him if they fished the same way down there as they did up above.

Mr. Rankin: What do you mean by "in the same way" Judge? I don't know myself.

Interpreter: Yes, that is what I want to know. I want to understand your questions clearly so I will know what you are getting at.

Q. Ask him if the Indians on the Oregon side let them fish on their side down at the Cascades, just the same as they did at Celilo.

A. Yes, the Indians fished just the same from both sides of the river.

Q. Ask him if the Wasco Indians and the Warm Springs let them fish out on the Deschutes just the same.

A. The fishery are free to us all. Wherever we wanted to fish we all fished together.

Q. Well, ask him if the Indians over there would let them fish out on the Des Chutes just the same as at Celilo.

166 A. Yes.

Q. Now, ask him where his tribe lived prior to when they went on the Reserve, before they went on the Reserve. Ask him where his tribe lived before they went on the Reserve.

A. I have already stated that my country where I was born was Wish-ham. I am a regular Wish-ham.

Q. Ask him how much country up there at Wish-ham his tribe had.

A. Something like in the neighborhood of ten miles up and down the river. He says that their fishing ground begins from where the ferry-boat is there at The Dalles, on up the river.

Q. Ask him what Indians have the country across the river from him? What tribe of Indians have the country across the river from him?

A. On the opposite side?

Q. Yes, on the Oregon side. Ask him what tribe of Indians have that country.

A. The Wasco Indians.

Q. The Wasco Indians?

A. Yes.

Q. Ask him how far up and down the Columbia river, on the Oregon side, the Wasco's country extended.

A. He says, I think I stated before that the Wasco fishing grounds began from this Lone Pine clear on up to Celilo.

Q. Tell him that I am not asking him where the Wasco fishing grounds went, but I am asking him how far their country went up and down the river—how far the country that belonged to the Wascos went up and down the river, without regard to the fishery.

A. I don't know the exact distance. I only said perhaps ten miles, or maybe more; twelve maybe.

Q. Ask him if the Wasco country went up as far as the John Day river.

A. No. That is beyond the Des Chutes you are just speaking of. That belonged to the John Day Indians. That is separate from the Wascos.

Q. Ask him if he means that the country along the Columbia above the John Day river belonged to the John Day Indians.

Mr. Rankin: Your Honor, I don't want to object to this, but it seems to me it is going rather far astray for the purpose of
167 this hearing. It is very interesting and all that, but I don't want to take up the time. It doesn't relate to any of the issues in this hearing.

Court: I presume Judge Bennett is trying to prove the theory that he spoke of when he opened this case, that these Indian tribes occupied certain territory and that they were cognizant of and recognized certain boundaries; and I suppose that is what he wants to do under that theory. I suppose he has a right to ask the questions.

Mr. Bennett: I am just trying to clear up the whole situation as much as I can. From the testimony it is a little difficult when one speaks in another language, but I am trying to show what the situation was among these Indians as near as I can.

Q. Now, then, the question is asked him if the John Day Indians had the country along the Columbia river above the DesChutes.

A. Yes, he says that they had a little country of their own separate from the Indians down this way.

Q. Ask him how far down the river the Wasco Indians came—how far down below The Dalles the Wasco Indians country came.

A. He says as near as I can remember the Wascos' claim for their part of the country was from The Dalles city up to the fishery away up above.

Q. Ask him what tribe of Indians had the country along the Columbia below the Wascos on the Oregon side.

A. There was another tribe.

Q. Ask him if that was the Hood Rivers.

A. Yes, those were the Hood Rivers.

Q. Ask him where the Warm Springs Indians had their country.

A. Their country began from the lower Des Chutes up to the upper Des Chutes, right up the Des Chutes, away up above. That is where it is now called the Warm Springs.

Q. Ask him how far this Lone Pine Point was above Dalles City.

A. He says, not very far. It is 2 or 3 miles perhaps, or 4 maybe.

168 Q. Ask him how many fishing places there were on the Oregon side—between Lone Pine and Dalles City.

A. There was no fishing places from Lone Pine down; only up the river.

Q. Ask him how far above Lone Pine it was to the next fishing point.

A. It all depends on the depth of the water. Certain seasons it will be several places to fish not far apart when the water is high, and when the water is low it throws the fishing places further apart. It all depends on the location of the water.

Q. Ask him how far it was from Lone Pine up to the next fishing point when the water was high.

A. When the water is high he says that the one fishing point, next fishing point, was where they call the chokecherry point. There was a place there when the water was high. When the water was high it was a good place to fish.

Q. Ask him how far it was from Lone Pine to this other point—how many miles.

A. To the next fishing place?

Q. Yes, between the two fishing places.

A. Next was a place where they call Ah-Woomit. That is a little ways.

Q. What I want to know is, how many miles it was from Lone Pine up to the next fishing place on the Oregon side.

A. He says, the first I told that Chokecherry Point was one.

Q. Ask him how far it is from Lone Pine to Chokecherry Point—how many miles.

A. He said, tell the gentleman for me, please, that I don't measure my ground at all. That has all been measured. I am not acquainted with the river up and down.

Court: Ask him about how far. Ask him what distance he thinks it was.

A. It might be two miles. I don't know.

Q. Ask him how high the bluff was above the water at Lone Pine when the water was at its low stage.

169 Q. *Ask him how high the bluff was above the water at Lone Pine when the water was at its low stage.*

A. The rocks?

Q. Yes, the rocks.

A. Oh, he says, I don't know—something like up to the ceiling when the water is low.

Q. Ask him if he knows how much ten feet is—about how much ten feet is.

A. He says I have some idea about what ten feet is, of course.

Q. Ask him if it was more than ten feet.

A. He says, I don't know. I couldn't say as to that.

Court: Can't you prove that by another witness.

Mr. Bennett: That wasn't the idea, your Honor. I was trying to find out what he knew about it and whether he really had any knowledge of the place at all or not. That was the idea.

Q. Ask him if he cannot tell whether it was as much as 20 feet or not.

A. He says, tell the gentleman as I said before I never made any practice of measuring that rocks or anything about it. I know the country is there. I was raised there.

Q. Ask him if it wasn't nearly 50 feet.

Mr. Rankin: He has already stated, your Honor, that he doesn't know the distance—he hasn't measured it.

Court: We will hear that question. I think we will stop there.

170 A. He says, I couldn't tell you whether it was 50 feet or how far it is. I never seen it measured.

Q. Ask him how old he was at the time of the treaty.

Interpreter: You mean when he was a boy, or when the treaty was made how old he was.

Q. Yes.

A. Indians never keep record of age. I think though I was along about fifteen years when the treaty was made.

Q. Ask him if he was just a boy then.

A. Yes, I was about so high.

Q. About—

A. Something like fifteen years.

Q. Something like fifteen years old.

Redirect examination:

Q. Did the Yakima Indians or did Charley Wasco fish at Lone Pine first?

A. The Indians all of them—Wasco Charley fished there first.

Q. Were those older Indians Yakima?

Interpreter: Yes.

Q. Ask him were those older Indians that fished there before Charley Wasco?

A. Yes, that is what he says.

Q. Well, now, this Lone Pine, did the Yakima Indians—

Court: He said Lone Tree. You are calling that Lone Pine.

Q. This fishing point Lone Tree, did the Yakimas think that they under their customs had a right to go there and fish, or were they only allowed to do it when the Wascos let them do it?

Mr. Bennett: I think that is leading, your Honor.

Court: This is an Indian witness.

Mr. Bennett: Yes, I know, but that is the very worst witness in the world to lead.

* A. I have already stated I believe different times that the
171 fishery was open to all that wanted to fish, to catch salmon.

Q. Now, these fishing places that he describes—Lone Tree, and the next, I understand, was Chokecherry Point.

Interpreter: Yes.

Q. Ask him if he knows where Seufert's place is now.

A. Mr. Seufert's, I believe, occupies all the fishing points that there is up and down the river.

Q. Yes, we don't doubt that, but we want to know where, with regard to Seufert's place, Chokecherry Point was.

A. He says, Mr. Seufert, they don't live up to Chokecherry Point, but he lives below.

Q. He lives below Chokecherry Point?

A. Yes, where he catches.

Q. Did the Yakimas fish at Chokecherry Point?

A. Yes.

Q. Where with reference to the river now, was Chokecherry Point? I want him to locate Chokecherry Point up there now. What place is it called now?

Interpreter: How do you mean?

Q. He says that the Indians fished at Chokecherry Point.

Interpreter: Yes.

Q. I want to know where it is on the river now. What is it called now? We don't know where Chokecherry Point is.

A. Don't know any other terms by which I can call that particular

point only as I said Chokecherry Point. It is wherever that was called Chokecherry Point, it is there yet.

Q. Have you, Louis, fished at Chokecherry Point?

A. Yes, I have.

172 A. Then there was another point beyond this Chokecherry Point they used to fish. Then further on and different parts all up and down the river a little ways apart.

Q. What position does Lquis Simpson occupy on the Yakima Indian Reservation?

Interpreter: Now?

Q. Yes.

A. I raise cattle.

Q. Raise cattle?

A. Yes.

Q. But what position does he occupy? Is he an officer of some kind on the reservation?

A. I am one of the judges out there.

Q. One of the Indian judges?

A. Yes.

Examination by the Court:

Q. Did the Wasco Indians and the Yakima Indians ever fight?

A. No.

Q. Were they always friendly?

A. They were always friendly.

Q. Well, now, you say the Wasco Indians used to go over on your side and fish.

A. Yes.

Q. Well, where did they fish on your side—what points?

A. They get the salmon where they know these fishing points, they get them.

Q. Did they go there to fish whenever they wanted to?

A. Yes, whenever they want to they come where the fishing points are.

Q. You say Wasco Charley fished at Lone Tree. While Wasco Charley was fishing, would the Yakima Indians come over and fish whenever they wanted to?

A. Yes, I have told you that, that the Yakima Indians has come there and fished.

Q. All the Indians come and fish that want to?

A. Yes. Yes, they come there and fish.

Redirect examination continued:

Q. Have Louis Simpson state whether or not the Wasco tribe and the Yakima tribes intermarry.

173 Mr. Bennett: I don't care much about it, but I contend that is immaterial.

A. He says, I never noticed that part of it. Of course it could be done, but he said he never paid no attention to that part of it.

Recross-examination:

Q. When does he claim to have first seen Sam Williams fishing there?

A. I don't know his exact years.

Q. I say, about when, as near as he can tell.

A. I hardly know. Maybe 10 or 20 years—something—I don't know.

Q. Ask him if he was fishing at Lone Tree about that time.

A. About what time?

Q. About the time that he says—I understood you to say 15 or 20 years ago.

A. Yes, he has fished there. I have seen him and other Indians, seen him fishing.

Q. How is that?

A. He has fished there at Lone Pine, yes, and other Indians seen him fish.

Q. Ask him if it was at Lone Pine that he saw him fishing 15 or 20 years ago, or Lone Tree.

A. It might be something like 20 years. I hardly know.

Redirect examination:

Q. Is he talking about Sam Williams or Wasco Charley?

A. Sam Williams.

Mr. Bennett: Yes, Sam Williams is what I asked him about.

Excused.

Adjourned until Monday at 10 A. M.

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PORTLAND, OREGON, May 17, 1915—10 a. m.

D. F. LAUGHLIN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination:

Mr. Bennett: Do you make any objections to Mr. Seufert's ownership of Lot 3, Section 36, and Lots 1 and 2 in Section 1? He has his deed from the State.

Mr. Rankin: Well, now, as I recall, your Honor, we don't question anything about Mr. Seufert's title to Lots 1 and 2 in Section 1; but I am under the impression at the present time that we have no evidence showing that he has any title to Lots 2 and 3 in Section 36.

Mr. Bennett: Lot 3 in Section 36.

Mr. Rankin: Three. We don't have any evidence that he owns Lot 3 in Section 36.

— But you don't make any question about Lots 1 and 2 in Section 1?

Mr. Rankin: No.

Court: Lot 3 in Section 36 is the one in front of the locus in quo.

Mr. Rankin: Yes.

Mr. Bennett: The one immediately in front. It is conceded that we own those two, but not conceded that we own that—Lot 3.

Court: Yes, I see.

Questions by Mr. Rankin:

Your name is Frank Laughlin, is it not?

A. Yes, sir.

175 Q. Where do you live, Mr. Laughlin?

A. I live in The Dalles.

Q. How long have you lived there?

A. Between 64 and 65 years.

Q. I notice on this map that the court has for reference there is a name W. C. Laughlin. Is that any relation of yours?

A. That is my brother.

Q. What land did he own up there, just generally?

A. He took a donation land claim which commences on the Northwest corner, about the foot of Washington street, Dalles City, and runs east a little over two miles to a point a little past three mile creek.

Q. Do you know where this Lone Tree fishery is?

A. I do.

Q. And the donation claim ran up by there?

A. Past that, yes.

Q. Do you know how that Lone Tree fishery got its name, Mr. Laughlin?

A. It got its name through being the only tree on that point. The Indians had a way of designating such things by some land mark, either where there was already one, or otherwise by making a land mark.

Q. How old were you at the time of the treaty, Mr. Laughlin.

A. I was six years old.

Q. Do you recall anything about the treaty?

A. I do not.

Q. With regard to this fishing point, state to the Court whether or not any of the Indians within your knowledge crossed over from the Washington side to fish there?

A. They did.

Q. Just state to the Court your knowledge on that point.

A. The Indians from both sides of the river crossed and recrossed, owing to the stage of the water and the fishing at particular
176 points; the Indian holding a common right of all such things that any Indian or any white man were entitled to all of those kind of benefits; and consequently the Indians from each side moved backwards and forwards, as the time might be, to fish where the fish were more plentiful and easier caught.

Q. What do you mean, Mr. Laughlin, by the stage of the water?

A. I mean at the stage of high water as it raises there is certain points it will get to, as it lowers there is certain points it will go. At certain points there are certain other places it will go.

Q. At low water where would the Indians fish?

A. It isn't at extreme low water, but the rising of the water. They commence fishing at Three Mile, then above at what later was termed the Evans place. The Evans place is located—I was hearing the testimony on Friday—the Evans house is located a little east of where they spoke of Chokeycherry Point, which is east of Seufert's cannery and east of Five Mile.

Q. I don't care so much about up and down the river as I do on the respective sides. When it was low water would the Indians fish on the north side of the river?

A. On the south side.

Q. That would be the Oregon side?

A. Yes.

Q. Would the Yakimas cross over to the south side or not?

A. Yes, Indians from both sides of the river. I suppose they are all termed Yakimas now. There were more that were Klickitat and River Indians. But any Indian from any place, any locality, fished there when they were in that locality.

Q. They were some of the confederated tribes and bands known as the Yakima Nation?

A. Yes, known afterwards as the Yakima tribe.

177 Q. As the water raised, with respect to the side of the river, which side would they fish on?

A. Well, they fished as I told you on both sides. There were times it was better on the Washington side than it was on the Oregon. But the later fishing from three mile rapids was up towards—well, between the two canneries of Mr. Seufert's as now located, and later on up at the Celido Falls.

Cross-examination.

Questions by Mr. Bennett:

— Mr. Laughlin, you say you were six years old at the time of the treaty?

A. At 1855, yes, sir.

Q. I take it then, you remember the Indian wars that immediately preceded the treaty? You were old enough to remember them?

A. Yes, I do remember the instance of that.

Q. Now, that war was between the whites and the Yakima Indians, wasn't it, the Indians on the Washington side?

Court: What war was that now?

A. 1855 and '6 he is talking about. That included the tribes on the other side of the river, yes, which joined under the Yakimas finally; and some of the Oregon Indians.

Q. What Oregon Indians do you claim were fighting the whites at that time?

A. I think as a tribe, none.

Q. What say?

A. As a tribe, none. But there were individual Indians that went into the war.

Q. And there were individual Indians of the Wascos that fought with the whites, weren't there?

A. There were three of the Wasco tribes that fought with the other side.

Q. That fought with the whites?

A. No. There were three that fought the other side.

Q. Three that fought with the other side?

A. Yes.

A. Well, there were a number of the Wasco Indians that fought with the whites, weren't there?

A. All of the Wasco tribe were always with the whites, as a tribe; but I say there were three that left the tribe and joined the other side.

Q. Three individual Indians?

A. Yes, sir.

Q. But there were a number of Indians that acted with the whites as scouts, weren't there?

A. Yes, at all times.

Q. Of the Wasco Indians?

A. I don't think, Judge—in the war of 1855-'6 I don't think that the Wasco tribes were called into the service.

Q. Well, they acted as scouts, didn't they, individual members of them?

A. Possibly. I say that for this reason the Cayuses offered 80 or 100 men.

Q. What say?

A. I say the Cayuses offered part of their men—I think something from 80 to 100 had offered their services, but were not taken.

Q. Didn't the Wascos also offer part of their men?

A. Yes, the Wascos at all times offered their services for the whites.

Q. Whenever there was war with Indians on the other side?

A. With any other Indians.

Q. Now, when did that war between the white people and the Yakimas commence?

A. I think in the Fall of 1855.

Q. Was it after or before the treaty?

A. Now, that is a question that I could not answer positively, Judge.

179 Q. Wasn't the treaty the winding up of the war?

A. I think the treaty was made immediately before the war, I think.

Court: And they violated the treaty in going to war?

A. I think so. The war was in 1855 and '56. Of course they must have fought after the treaty or it could not have been fought in 1856. Now, I don't know the date of the treaty in 1855.

Q. Well, the treaty was in June, 1855. Assume that the treaty was in June, 1855. That is when it was made; not when it was ratified.

A. Well, I believe they certainly were fighting after that.

Q. What say?

A. The fighting was after that.

Court: The war was in 1855 and '56, wasn't it?

A. Yes, sir.

Q. Yes, the war was in 1855 and '6. Now, the Yakima Tribes were pretty warlike tribes, weren't they?

A. There were portions of all of these tribes, but not all of the tribe, that joined in this war.

Q. Portions of them were very warlike?

A. I think quite a large portion of them.

Q. And the Wascos on the other hand were peaceable, and friendly to the whites always?

A. Yes, sir.

Q. And before these wars there had been a good deal of trouble, hadn't there? For some years before the wars there had been a good deal of trouble between the whites and the Indians—individual cases of trouble?

A. Well, there always was some individual cases of trouble, yes.

Q. Between the Yakimas and the whites?

A. Yes.

180 Q. Now, there also had been trouble about the Yakimas coming over, and they were in the habit sometimes of coming over and kidnapping some of the Wasco women, weren't they?

A. I don't think so.

Q. You say that was not true?

A. I don't think so.

Q. Do you know whether it was so or not?

A. I do not know.

Q. Now, where was this Lone Tree, Mr. Laughlin, from which you say this point took its name?

A. It is on the ridge between three mile slough and the main river—in about in that, somewhere in the neighborhood of where that Indian settlement is now.

Q. How far back from this point?

A. How far back from Three Mile Point?

Q. Yes, about how far back from this point?

A. You mean the point in the river?

Q. The point where they claim the fishing occurred.

A. Oh, I presume it is three quarters of a mile, possibly more.

Q. Three quarters of a mile back from that?

A. Yes.

Q. How big a tree was it?

A. It wasn't a very large tree.

Q. About what size?

A. I would say about, as I remember it, about 8 or 10 inches through and probably 20 feet high.

Court: What was it—a fir?

A. A pine.

Court: That stood inland from the point?

181 A. Yes, sir. It stood on this sand ridge that lies between three mile rapid and what we call three mile slough that runs—oh, something over a mile north—a mile and a half, I guess, north of three mile rapids—or south.

Q. Now when do you first remember of observing that tree?

A. Well, that, Judge, to say as to the time, I can remember it ever since I was old enough to remember anything because as a boy I was over that ground time and again.

Q. It was there when you were five or six years old, was it?

A. Yes, sir, it was there when I was a small child.

Q. When did you last observe it there?

A. I couldn't say to that exactly. I know that it was there for a number of years afterwards—I will say into the 60's sometime; perhaps later than that, but in the 60's. After 1868 I wasn't in The Dalles much for a number of years and didn't go up into that part of the territory and took no particular notice whether or when it was taken away from there.

Q. So then along about 1868 is the last time you remember of seeing the tree?

A. Yes, sir, that is as far as my recollection would go on that.

Q. That was a mile back from this point?

A. Well, somewhere from three quarters of a mile to a mile, yes, sir. It stood above high water.

Q. How is that?

A. It stood above high water.

Q. The tree stood above the highest freshet?

A. Yes, sir.

Q. Now, does this resemble that point—the point projecting into the river there?

A. This in here?

Q. Yes.

A. It is not so sharp as it used to be. It runs out more to a point originally.

182 Q. That is, there was a point ran out about 125 feet further here, that was blasted off by the Government?

A. Is that so? I never have been there since that was blasted off.

Q. But outside of that point extending out farther, it resembles what it did then?

A. Yes.

Q. When the Indians fished there, how did they fish there?

A. They fished with nets, dip nets, and spear, and a hook fastened sometimes on the end of a pole.

Q. Did they stand on the shore and fish off?

A. Yes, sir, they stood on the shore and fished off.

Q. At what kind of places would they fish?

A. Different kind of places. There were some places, as I say, they would fish with dip net; other places they would fish with hook on the end of a pole; that is, it is a large hook fastened on the end of a pole, so that when it pulls and slips into the fish it leaves only a short cord or rope about 15 or 16 inches long.

Q. Did they fish with dip nets and with these hooks at the same place?

A. Well, they fished more with the hooks in shallow water than they did with dip nets.

Q. And where did they fish, in shallow water, with the spears?

A. Yes.

Q. Was the water deep or shallow off this point?

A. Deep in places and shallow in others.

Q. Where were the deep places and where were the shallow places?

A. That would be, Judge, a hard question to answer as to where, but there was all turns owing to the different places of rock that went off from this point; some places it was quite shallow, that we could get in and wade in low water; other places it was deep.

183 Q. Isn't it a fact that on this particular point the water was deep all around it?

A. I don't think so, Judge.

Q. Well, where was there a place about that point, above or below or on the point, where you think it was shallow?

A. This point runs back into here. Evidently in making this—that is that slough point that makes back in here. I judge that from this map.

Q. Well, I suppose that is where the water extends back in there?

A. Yes, that was the water. There were places in there that were deep, off from the bluff. There were other places you could go down to the water and get into the water.

Q. Well, were there any shallow places on the point or was that all deep around there?

A. That is a question that I do not know.

Q. Whereabouts on this point was the fishing place?

A. They fished a number of places on that point owing to the stage of the water. That depends upon the rising of it up early and late.

Q. Well, what places did they fish, as you remember it?

A. My notion of it is that they fished through points back in here, all around that point; not up so far as here, but up to say that far up.

Q. Well, now, how do you claim that they fished on this point that ran out here, with spears or with hooks or with dip nets?

A. Some places with dip nets and some places with spears.

Q. Whereabouts with dip nets and whereabouts with spears?

A. Well, now, that is a question that I couldn't answer at this time as to any identical point, because it would be unreasonable to expect that a man would remember the identical spot for that number of years that a man would fish out of. The simple fact that they fished around there is all that I could say.

184 Q. Somewhere on that point?

A. Yes, sir.

Q. Did you know Whiskey Charlie?

A. I did not.

Q. You never saw him fishing there?

A. I don't know him. I might know him from his face, but I don't know any Indian by that name.

Q. What particular Indian did you ever see fishing there?

A. No particular one.

Q. You could not identify any one?

A. I could not identify an Indian that fished there.

Q. Now, Mr. Laughlin, the main Indian fishing place along the Columbia river there was up at Celilo Falls, wasn't it?

A. At times.

Q. Well, and wasn't that the place where most of the fishing was done?

A. I don't think so, no. There is a place in there by the old Evans place at a certain stage of water they caught a great many fish. There were other times, at other places, that they were more plentiful. Now, I simply know this from the fact that I rode backwards and forwards over that ground, time in, and time out, and it is what I saw as I went by; not that I took part in the fishing, or that I knew any identical Indian. I did at that time know a good many Indians, but that has been a long time ago, and the most of those have passed out.

Q. Now, isn't it a fact, Mr. Laughlin, that at the Falls of Celilo, and below the falls of Celilo, on the Rock Flats below the falls of Celilo, there is a series of benches in the river, separated by 185 channels or sloughs, and that those next to the river are covered at low water, and as the water gets higher, it extends back onto the higher benches, and higher channels among the rocks?

A. Yes, sir.

Q. Well, now, isn't it true that on account of the way those channels are located, and of the raise and fall of the shore line over the rocks on each side, that both the earliest and latest fishing there is on the river is along those falls?

A. That is a possibility that that may be true, the same as it is of early fishing at the Three Mile Rapids, at certain places at the falls. I know less of early times of the Celilo Falls than I do of this later part of it, for at that time, in my occupation, after cattle and stock, I went as far as what they called then the Big Willows. That is between the Narrows below and Celilo Falls, but very seldom was I as far up as Celilo Falls.

Q. Then you don't know much about whether there was good fishing at all seasons of the year, on both sides at Celilo Falls; that is, the season when the salmon were running?

A. That is something that I have no knowledge of.

Q. You don't know about that?

A. No, sir.

Q. Was there a fishing point on the Washington shore opposite Three Mile Point?

A. Yes, I think there was to a certain extent, but not very—not as good as the other. I think they fished all along there at places along on both sides, but I think right opposite Three Mile Rapids, I don't think there was much of a fishing place.

Q. Over there by the land that is now owned by Mr. Rorick, wasn't there a fishing place there?

A. Possibly some were caught there.

186 Q. Where they dipped and speared far more than they did on this side?

A. I don't think so—not so much; not half as much.

Q. You were not over there as much as you were on this side?

A. No, I was on this side. I wasn't over on the other side, only as I could see across the river, is what I would know about the Washington side.

Q. What Indians occupied the land on the Oregon side during those years?

A. At The Dalles?

Q. Yes, from The Dalles up, say.

A. Immediately up Mill Creek and down the flat from Mill Creek, where the old Catholic Mission and through there, was occupied by the Wasco tribe.

Q. Down to the Columbia River?

A. Not down to the river. They used the ground down where the shops are now, for a buttering place for their acorns that they gathered in the fall, but their huts were up on Mill creek and down that flat.

Q. I mean, but where was the country that they owned?

A. Well, I don't know what they owned. I don't know as anybody else knows. An Indian usually owned wherever he seen fit to go, in common with others.

Q. Wasn't it a well understood fact that the Wascos owned from The Dalles up to the Deschutes river, along the Columbia?

A. I don't know. I know we termed them as the Wascos and the Celilos, and the Deschutes, but as to what their ownership was, and where the line was, I don't know.

Mr. Rankin: What was the last name, Mr. Laughlin?

187 A. The Wascos, the Celilos, and the Deschutes.

Q. How far up did you understand the country of the Wascos went?

A. I have no understanding as to how far it went, Judge.

Q. You didn't pay any attention to that.

A. They done their farming down in on Mill Creek and gardening such things as that, and from there went out wherever they might, in considerable territory; but as to what their ownership was, or their claim, that is something I know absolutely nothing about.

Q. You didn't pay any attention to that?

A. No, sir.

Q. You understood that the Wascos and the John Day Indians had their place of residence on the Oregon side, didn't you?

A. Yes, the John Days, the Celilos, and the Deschutes.

Q. And that the Yakimas had their residence on the Washington side?

A. Yes. That included a number of different tribes.

Q. Yes, that included a number of different tribes.

A. Yes, sir.

Q. And that the Columbia River was the boundary between them?

A. Yes, sir.

Redirect examination:

Q. But so far as the fishing was concerned, why, they fished, either tribe fished on either side of the river.

Objected to as leading.

Court: That is only in answer to what has been said before. I think he has been over that ground. I want to ask something myself, whenever you get through.

Q. Did you ever hear of a purely Indian War between the Yakimas and the Wascos?

A. No.

Q. What were their relations, so far as you know, peaceful
188 or otherwise, Mr. Laughlin?

A. Peaceful with all tribes except the Snakes and the Utes.

Q. This Treaty, I believe, the record shows, was ratified in 1859. There was no war with the Yakimas after 1859?

A. No.

Q. Or was there?

A. No, not after 1855 and '56.

Q. And so far as Judge Bennett's questions to you regarding Celilo, etc., state what particular part of the river your attention was drawn to during those years which you have testified to.

A. From a point about half way between the Narrows and Celilo Falls.

Q. What do you mean by The Narrows, Mr. Laughlin?

A. That is where the water goes through about a 200 foot channel, for a distance.

Q. Is that above or below The Dalles?

A. It is above The Dalles. Above the town of The Dalles, you mean?

Q. Yes.

A. Yes, it is above.

Q. Where, with reference to Three Mile Rapids?

A. It is above Three Mile Rapids.

Q. Now, this is the same plat as there just for reference, Mr. Laughlin, you spoke about some of the point being blasted off. I will ask you whether or not this map here, or blue print indicates to you the point as it originally was on the river there, at Lone Tree, as to whether or not it was sharp or rounded off?

A. Well, that looks more natural as to the original part. This part going out here.

Q. Running out there?

A. Yes, running out further. I said I had never been there since they blasted off that rock.

Q. You spoke about the Government blasting it off.

A. Judge Bennett spoke about it.

189 Q. Yes, that is right. Do you know anything about the Government blasting it off?

A. No, I don't know, only that out there you could see that.

Mr. Bennett: I think I will offer this in evidence, if it has not been offered in evidence, your Honor.

Marked "Defendant's Exhibit 1."

Examination by the Court:

Q. Mr. Laughlin, how far was the Three Mile Rapids above this Lone Tree Point?

A. It was out, the Three Mile Rapids is, into the river. I can perhaps show you on that map something near where it was. That Lone Tree, I would say, was somewhere in one of these two plots here.

Q. These are Lots 2 and 3 in Section 1?

A. Yes.

Q. Well, now, then, where was Three Mile Rapids?

A. There is Three Mile Rapids up there.

Q. Is it right off the point where they had the fishing?

A. Yes.

Redirect examination continued:

Q. How far does Three Mile Rapids extend along in front of Lots 1 and 2, in Section 1, Mr. Laughlin?

A. I don't know how far they counted what they call Three Mile Rapids. Of course, a short place somewhere was short in here. How long they call those rapids, I don't know. That is something I could not answer.

190 Court: This point is about how far above The Dalles, now?

A. In a direct line east it is a little less than two miles. This line of the donation claim is a little over about two miles and a quarter long, and it extends up to there, you see, just a little east of the rapids. Then if you take it out angling there, it would make it a little further.

Court: How far was the Celilo Falls above this point?

A. The Celilo Falls was about nine or ten miles above Three Mile Rapids.

Court: You say the Indians used to fish off that point? I wish you would state more in detail with what regularity and with what numbers the Indians fished there.

A. They fish there yet. At that time, the food of the Indians in winter was acorns and fish, and they dried them, and they came in there, all the tribes came in and fished, and they fished at whatever locality at the immediate time might be the best. Under Indian customs, they do not recognize the right of monopoly, but every Indian has a right, and every white man has a right, to anything that is public. For instance, as an illustration of it, when we first went to The Dalles, we hauled up the drift that accumulated on that bottom up there, and hauled up a year's supply. They remonstrated at us for doing so, saying that that was everybody's, as they wanted to use it. We should not accumulate a pile of it, but we were perfectly free to go and get it whenever we needed it. That is the custom with them. It is not the custom of an Indian to deprive any other Indian, or any other person. They recognize the right, when one person is there fishing, not to disturb him, but when he goes away, another goes in and takes his place.

191 Q. That was the way they used this point?

A. That is the way they used this point and all those points. The Dalles was a meeting place of all Indians of the tribes of eastern Oregon at one time.

Court: I asked you with what regularity they fished there. You said something about fishing there during the low water and high water, at different times.

A. When it gets high, it floods over that point—they could not fish there?

Court: At all times when they could fish there, did they use it to fish there?

A. They did, yes.

Q. Regularly?

A. Yes.

Q. Without cessation?

A. Yes, sir.

Q. Now, what Indians used that?

A. Any Indian who wanted to fish. An Indian, in the spring of the year, at those times was as anxious for the first fish as any delicacy that we might want now; and for the first fish that was caught, money nor nothing else would buy it, and consequently they fluctuated first to where they could get the first fish.

Court: Was that a point where they could get it?

A. That was the first in this upper fishery. That is, the fishery between here and Celilo. There are other points down below here that they caught fish, at the mouth of White Salmon and along there, still earlier than they did up here, I guess.

Q. This is the point they caught the first fish—

A. Of this Dalles fishery, yes.

Q. Above The Dalles?

192 Yes, as far as I know. The Judge asked me the question as to Celilo Falls. That I absolutely wouldn't know whether there might be this early fishing there. There might have been Indians fishing there at the same time they were fishing at Three Mile Rapids. That I don't know. But they moved then up, and there were the channels that come through there above at this Cherry Point they talk about—at times they were very full of fish. At certain stages of the water they caught fish very fast.

Examination by the Court:

Q. You say the Wascos used this fishery?

A. Yes.

Q. And also the Yakimas?

A. All the Indians.

Q. Well, how did the Yakimas get across?

A. Came across in canoes.

Q. Right at this point?

A. Above Three Mile Rapids.

Q. They had to cross above Three Mile Rapids?

A. They crossed above Three Mile Rapids at that point. They crossed backwards and forwards. After they got above the Narrows, they crossed backwards and forwards.

Q. They would come across and come down to this point?

A. They would land right on that point.

Q. They could cross there at any time with their canoes, could they?

A. They could cross there at that stage of water at any rate, yes, most any time.

Q. Well, now, in what numbers did they come across there?

A. Well, I should say that in the day time during the time of the day that there would be 15 or 20 canoes cross over, backwards and forwards.

193 Q. They would come over, catch the fish, and go back?

A. Go back, because they lived on the other side, yes.

Q. Did that continue all during the fishing season of each year?

A. That continued year in and year out, yes.

Q. Did they come across there in about the same numbers that the Wasco used this point?

A. That is a question I could not answer exactly, Judge, because I might see a canoe coming across or going back, and it might be Wasco, or it might be Yakima. I know it was a common matter of Indians crossing backwards and forwards fishing on each side of the river.

Q. Was it common for the Wasco to go across and fish on the other side?

A. Yes, just as common as it was for these people to come across and fish on this side.

Q. This, you recognize then, as a definite point where the Indians were in the habit of using for a fishery?

A. Yes, sir.

Q. That was one of their accustomed places?

A. One of their accustomed places in early times.

Q. You think there is no doubt about that?

A. I know there is no doubt about it.

Recross- examination.

Questions by Mr. Bennett:

— At that time, there were great numbers of fish in the river?

A. Yes, sir.

Q. And millions of them went by?

A. Went on up the river.

194 Q. Died up on the Piute and up in there, and rotted up there by thousands?

A. Yes.

Q. But anywhere where there was a rapid, the Indians could go in and catch plenty of fish?

A. Yes.

Q. Did you ever see them fishing with wheels there?

A. No.

Q. That was an unheard of thing at that time?

A. It was.

Q. In those days?

A. Yes, sir.

Mr. Rankin: What days do you particularly refer to, Judge?

Mr. Bennett: Those earlier days.

A. He is speaking of the years, I understand it to be, between 1855 and 1865.

Q. Yes, 1868, we have as the date. It was an unheard of thing.

A. Yes.

Q. You have had some—you and Mr. Seufert are not on very good terms, are you?

A. We are so far as I am concerned. We sometimes jar a little, and sometimes feel pretty friendly towards one another. There is times—

Q. You have had of late years considerable disagreement about the management of the Wasco Warehouse & Milling Company, haven't you?

A. Well, he may have had. I have not.

Q. Well, you know that there has been hard feeling between you about that?

195 A. I know that he was troublesome in the management, and we left him out of the directorate. It wasn't any particular trouble for us, as I know of.

Redirect examination:

Q. Counsel has spoken of possible disagreement between you and Mr. Seufert. Has that in any way influenced your testimony in this case?

A. It has not. It would not if we had had actual disagreement, which we have not had.

Q. It would not have influenced you then?

A. No, sir.

Q. Now, counsel also asked if there were Indians had any wheels on the river, fishing wheels between 1855 and 1858?

A. Yes.

Q. Were there any wheels, of white men or Indians on the river?

A. No, sir.

Witness excused.

96 W. H. GATES, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Your name is William H. Gates?

A. Yes.

Q. You reside at The Dalles, Oregon?

A. Yes, sir.

Q. Or do you reside at The Dalles?

A. My residence is Wheeler county—Sprague.

Q. How old are you, Mr. Gates?

A. 78 last December.

Q. Have you ever lived at The Dalles?

A. Yes, sir.

Q. And for how many years did you live at The Dalles?

A. My home was at The Dalles from March, 1854, until November, 1868.

Q. How old were you in the year 1855, Mr. Gates?

A. 18 years old.

Q. Do you recall anything about treaties with the Indians in 1855? Do you remember any treaties with any Indians?

A. Yes, sir.

Q. With what Indians?

A. Wascos.

Q. Do you recall anything about the treaty—do you remember when the treaty of 1855 with the Yakimas was made?

A. No, sir, I don't remember just when that treaty was made.

Q. You remember that there was such a treaty, do you not?

A. Well, there was an attempt to make a treaty—I suppose the treaty was made in Walla Walla after the treaty with the Cayuses was made. The treaty with the Cayuses was on the 20th of May, 1855. I left there on the 18th of May.

Q. Did you spend much of your time along the river, Mr. Gates?

A. No, sir.

Q. Did you observe the Indian tribes?

A. I didn't understand that.

Q. Did you observe the Indian tribes on either the Oregon or Washington side of the river?

A. Oh, yes.

Q. State to the court, Mr. Gates, what was the habit of these Indian tribes as to whether or not they would cross back and forth.

A. Fought?

Q. Cross over the river, back and forth?

A. No, sir, I never heard of any difficulty amongst Indians.

Q. You didn't get my question, Mr. Gates.

A. I am a little hard of hearing.

Q. I wanted you to state to the court what was the custom of the

Indians about crossing back and forth over the Columbia river—if they did or did not cross.

A. Oh, yes, yes, sir.

Q. Tell the court about that.

A. Well, the Indians along the Columbia from here clear up to the British Columbia line were friendly with each other on both sides of the river. The river was the dividing line between the Oregon Indians and the Washington Indians. They were friendly—crossed backwards and forwards frequently; at all times of the year, they were crossing backwards and forwards.

Q. Did you know a point on the river called by the Indian name of Lone Tree?

198 A. Yes, sir.

Q. Where was that located, Mr. Gates?

A. That was located at Three Mile Rapids.

Q. And state whether or not you have ever seen Yakima Indians fishing at that point?

A. I don't think I ever seen any Indians at all fishing at that point.

Q. Did you ever see any Indians, Yakimas, fishing at Lone Tree?

A. I don't remember ever seeing them fish there. I have seen them there camped there.

Q. You have seen them camped there?

A. Not right at Lone Tree, or right at the rapids, but camped there for the purpose of fishing.

Q. Camped there for the purpose of fishing?

A. Yes. They never did camp there that I knew of, except for the purpose of fishing.

Q. And were there Yakima Indians that you saw there? Were there any Yakima or any of the confederated tribes?

Mr. Bennett: That is pretty leading.

Mr. Rankin: I am just asking him.

Mr. Bennett: You can ask him what Indians.

Q. What Indians were camped there, Mr. Gates.

A. All the different bands of the Wascos would camp there; that is, part of bands of all the Wascos. And then there was another band I remember seeing camped there. They were from John Days. I don't know whether they belonged to the Wasco tribe, or not. There was another band—they were Wascos. I seen the chief and some of his bands. Their usual place of residence on the river was what we call Three Point Rapids, or at Celilo, ten miles
199 above. But I have seen them over there at Three Mile Rapids.

Q. That was the usual place of the Wascos, did you state?

A. What?

Q. Did you state it was the usual place of the Wascos?

A. Yes, at certain stages of the water.

Q. Now, how about Indians from the Washington side?

A. Well, this band from Three Mile Point, or Three Point Rapids,

was on the Washington side, and that was the home through the fishing season of one band of the Yakimas.

Q. Well, now would you ever see them down at Three Mile?

A. Yes, sir.

Q. How many years did you notice them there? More than one year?

A. Yes, I have seen them there three or four times, if not more. But I know I have seen them there three different times.

Q. And what about their numbers, Mr. Gates?

A. Well, I don't know. Perhaps there was a hundred in the band, big and little, I guess there was a hundred of them.

Q. Do you recall any particular Indian that you knew, that you saw there?

A. Yes, sir.

Q. Who?

A. Chief Collowas.

Q. Any others, Mr. Gates?

A. Not that I remember the names of.

Q. Did you know George Watters, that was here on the stand? You met him this morning. Did you know George Watters?

A. Yes, sir.

Q. How long have you known him, Mr. Gates?

A. I don't remember. Perhaps I have seen him and knew him before, but I don't remember but one time seeing him. That was in 1868.

Q. Where did you see him then?

A. In Yakima.

Cross-examination.

Questions by Mr. Bennett:

— Mr. Gates, you say the Three Mile Rapids extended across the river to the Washington side as well as the Oregon side?

A. Not quite across.

Q. Not quite across?

A. No, sir, there was always water running in the deep channel.

Q. What say?

A. No. The rapids did not extend across the river.

Q. There was no rapids on the Washington side?

A. Not at that point of the river.

Q. Well, now, these Indians, these Yakima Indians that you say you saw down in that vicinity, were they on the Washington side or the Oregon side?

A. They were on the Oregon side when they come down to the Three Mile Rapids to fish, or do anything else.

Q. Well, where did they live?

A. I don't know where their winter residence was, through the hunting season, but their summer residence was what we call the Three Point Rapids at Celilo, just below Celilo Falls, and on the Washington side.

Q. That was where they lived in the summer time?

- A. In the fishing season.
- Q. Was that the place where they usually fished up there?
- A. Yes, it was their main fishing grounds.
- 201 Q. That was their main fishing ground?
- A. They would fish up and down the river. It was according to the stage of the water, where they fished. The rise at the foot of one point would put that point out of commission, and perhaps open up another point that they could fish for a while.
- Q. There were different fishing places on both sides of the river, up and down?
- A. Yes, sir, for ten miles.
- Q. Along ten miles on both sides of the river?
- A. Yes.
- Q. Up there at the Celilo Rapids, the bottom of the river slopes up where the rocky part of it, where the channel runs, slopes up towards the Oregon side, and towards the Washington side, don't it?
- A. Yes.
- Q. So that, at low water, there would be some of those channels exposed?
- A. Yes, sir.
- Q. Then at high water, the water would get through other channels, and they would fish through there?
- A. Yes, sir.
- Q. So on, keep going back?
- A. Yes, sir.
- Q. Now, at this time when you say you saw a hundred Indians—
- A. Of that band.
- Q. Well, I didn't understand. I was going to ask you whether it was of that band, or some other band that you saw a hundred Indians down there at Three Mile?
- A. Oh, I don't know. I have seen perhaps 15 or 20 wickiups there at one time.
- Q. Yes, but did you know what Indians they were?
- 202 A. They were mixed, but whenever the fishing was right at Three Mile Rapids, there would be Wascos there from Hood River to Deschutes.
- Q. That was the usual Wasco fishing place, was it?
- A. Oh, yes; yes, sir.
- Q. That was where the Wascos generally fished when the water was right?
- A. It was owing to the stage of water. It was called the earliest fishing there was on the river.
- Q. And sometimes the other Indians would come over and visit them?
- A. Yes, sir.
- Q. And when they would come over to visit them, you think that sometimes they would fish there?
- A. Oh, I think so.
- Q. You don't know about that?
- A. I don't know about that.

Q. You don't know whether they fished there, or whether the other Indians gave them fish?

A. Well, I suppose that, particular band——

Q. That is, I mean as to the Washington Indians?

A. Yes.

Q. You couldn't say as to them. What were you doing from March, 1854, to November, 1868, Mr. Gates? What was your business?

A. Well, I didn't do much of anything in the year 1854.

Q. You were just a boy then?

A. Yes, sir. I put in a crop of grain 15 miles south of The Dalles; then I went with my team to Walla Walla. That was in May, 1855. I went back in May, and from that time on, well, perhaps, a month after I got back, I commenced scouring around over the country. I was under the orders of the Indian agent
203 for two or three months. We knew that an Indian war was coming on. We organized what we called a Home Guard.

Q. What Indian war? That was the war of 1855-6?

A. Yes. That was previous to the war, but we knew the war was coming. I was under the orders of the Indian Agent for perhaps three months, until the Governor called for volunteers. Then I enlisted in the volunteer service.

Q. How long had there been trouble that seemed to indicate that the war was coming on, before the war actually broke out?

A. How long?

Q. Yes. A year or two.

A. No, sir.

Q. Well, how long?

A. Well, the first trouble I seen or heard of was I seen an Indian spit in the superintendent's face at Walla Walla, and refuse to talk about selling his land. That was the 17th of May, 1855.

Q. The 17th of May, 1855?

A. Yes, sir. But the Indians were getting unruly and troublesome.

Q. What say?

A. The Indians were getting unruly and troublesome all the time after the treaty with the Cayuses and the Yakimas.

Q. When was that?

A. In May, 1855.

Q. Had they been troublesome before that?

A. No, sir.

Q. Now, that war was with the Yakima and Washington
204 Indians, wasn't it, between the whites and the Yakima and Washington Indians?

A. It was between the seven tribes. There was the Wascos, Klititats, Yakimas, Cayuses, and the Spokanes and Coeur d'Alenes.

Q. Do you mean to say that the Wascos were at war with the whites?

A. Yes, sir. Not all of them. Now, that three months that I put in, under the orders of the Indian agent was for the purpose of keeping the Wascos from joining the hostiles. We captured three or

four little bands on their way to join them, and brought them back, and put them in the guard house—the leaders, and we cruised up and down the Columbia river, from the Cascades up to John Days river, breaking up the canoes, so they could not cross.

Q. Well, now then, as a matter of fact, they didn't join the hostiles, did they?

A. Oh, they nearly all went.

Q. You mean to say that——

A. Now, I include in the Wasco tribe the Hood River Indians, the Indians living at The Dalles, the Deschutes Indians, and Warm Spring Indians. They are what is known as the Wasco tribe.

Q. Isn't it a fact that there wasn't but three of the Wasco Indians that ever went over there?

A. Three?

Q. Yes, three of them—three renegades.

A. No, sir. There was the Chief of the Wascos, war chief of the Wascos, hired to the Yakimas and Cayuses, and furnished 200 men, and got his pay for it.

Q. What?

A. Furnished 200 men.

Q. 2200?

A. 200.

205 Q. 200 men?

A. Yes, sir.

Q. They got paid, eh?

A. Yes, sir.

Q. By the Yakimas?

A. The Yakimas and Cayuses.

Q. Paid them. They were Wascos, were they?

A. They were Wascos.

Q. Now, isn't it a fact that the Wascos fought with the white men?

A. Ten of them did.

Q. Well, isn't it a fact that the tribe as a tribe fought with the white men?

A. No, sir.

Q. And that they scouted for the white men?

A. There were ten of them fought with us in the battle of Walla Walla—only ten.

Q. As scouts?

A. No, sir.

Q. Well, didn't they also—didn't they offer to furnish a larger number, and wasn't their offer refused?

A. I don't know.

Q. You don't know about that?

A. I don't know about that.

Q. What part of the Wascos were fighting on your side—you know of that, because they fought right with you?

A. They fought right in the same battle that I did.

Q. What year was that?

A. 1855.

Q. What time in the year?

A. That the fighting commenced?

Q. Yes, what time was it that you was fighting up there?

A. From the 7th to the 10th of December, 1855.

Q. When did the fight commence—the fighting commence?

A. The morning of the 7th of December.

Q. Now, that is sometimes called the Kamaiakun War, isn't it?

206 A. Well, yes, or the Yakima war. Kamaiakun was the chief of the Yakimas.

Q. And he was the chief of the Indians that were at war, wasn't he?

A. Yes, sir.

Q. They were fighting under him?

A. Yes, sir.

Q. Who was this Collowas, the Indian that you knew?

A. He was the petty chief of one band of the Yakimas. All tribes were in bands, with a small chief over each band, and they all recognized the head chief.

Witness excused.

T. A. HUDSON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

You live at The Dalles, Mr. Hudson?

A. Yes, sir.

Q. How long have you lived there?

A. It will be 37 years next August.

Q. 37 years next August. State to the court, Mr. Hudson, what you know about Indians, if anything, on the Washington side crossing to the Oregon side, or the Oregon side crossing to the Washington side. Just tell the court what you know.

A. Oh, I don't know anything except in a general way I have seen them crossing and recrossing.

207 Q. Numerous times, or rarely?

A. Well, I can't say numerous. I really don't know but very little about it.

Q. Have you ever seen Indians fishing at Lone Pine, or Three Mile Rapids?

A. I have seen Indians fishing there, spearing for fish in early days.

Q. How long ago?

A. It is a long time ago, probably 35 or 36 years ago.

Mr. Bennett: How long ago?

A. 35 or 36 years ago.

Q. Do you know Sam Williams?

A. Yes, sir.

Q. Do you know where he has fished?

A. No, I do not.

Q. You never saw him fishing?

A. I never saw him.

Q. What can you say about whether or not numerous Indians have fished, coming from the Washington side, have fished on the south side?

Mr. Bennett: That is very leading. I object to that.

Mr. Rankin: He doesn't know anyway.

A. I don't know.

Cross-examination.

Questions by Mr. Bennett:

Do you know Wasco Charley, an Indian called Wasco Charley?

A. That is one that died—one-eyed fellow.

Q. Yes. Was he the Indian that you saw fishing up there on the point?

A. I couldn't identify him. No, I don't know. I couldn't say as to that. I have seen Indians fish there—spear for fish.

Q. You didn't know what tribe they belonged to?

A. No, haven't the slightest idea.

Witness excused.

208 AMOS UNDERWOOD, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Your name is Amos Underwood?

A. Yes, sir.

Q. And where do you live, Mr. Underwood?

A. At Underwood, *Underwood*, Washington, up on this North Bank road.

Q. Is Underwood, Wash., named for you?

A. Yes, sir, it is my town.

Q. How long have you been residing there?

A. I come across the country in 1852, and I have been there off and on, but living right on the place. I would have to sum it up over 40 years.

Q. You came there in 1852?

A. Yes, sir.

Q. Have you been away any time since to amount to anything? Any length of time?

A. No. I have been all through the Indian wars, and my business a good deal of the time as boatman to The Dalles.

Q. Boating to The Dalles?

A. And the Cascades.

Q. How far is Underwood from The Dalles?

A. It is about 28 miles I think.

Q. How old were you when you came to Oregon in 1852?

A. I was just past seventeen.

Q. Past seventeen?

A. Yes.

Q. What has been your principal business, Mr. Underwood?

A. Oh, I have been in all kinds of business, but boating
209 a great deal of the time.

Q. Boating on the Columbia river?

A. Yes. I have been staying at home a long time on the farm.
I just stay at home there at the landing.

Q. How long were you a boatman on the Columbia river?

A. Oh, a good deal of the time for forty years.

Q. What kind of boats did you operate?

A. Flat boats mostly, and I used to run steamboats some. I ran
the little Wasco for Captain McFarland; when he would want to take
a trip to Portland I ran the boat for him.

Q. The early boats you operated, what kind were they?

A. Hudson Bay Batteau.

Q. That is what they used to go down the river with in the early
days?

A. Yes, sir.

Q. Are you acquainted with that portion of the Columbia river
called Three Mile Rapids?

A. Well, I have been along there many times, but I have had no
acquaintance there. I used to have business for a good many years
on John Day river. I used to pass going up to my business on John
Days.

Q. John Day is east of The Dalles and Three Mile Rapids?

A. Yes, about 40 miles off, I guess.

Q. Did you ever see any Indians fishing at Three Mile Rapids?

Mr. Bennett: That is very leading, your Honor.

Court: That is only opening up the way.

Mr. Rankin: I have got to approach the subject from some angle.

Mr. Bennett: It is a very material point, it seems to me, to
210 be leading the witness on.

Q. Did you understand my question, Mr. Underwood?

A. Yes, sir.

Q. Have you ever seen any of the Indians fishing there?

A. Yes.

Q. What Indians were they?

A. I never stopped to ask them.

Q. Where did they come from, if you know?

A. Well, they come from all around the country. Some come
across the river, some come even from—But of course Indians live
on both sides of the river, and I have seen them fishing on both
sides.

Q. When do you recall seeing them there first?

A. Well, I come there in 1852, and I have seen them ever since.

Q. When do you last recall seeing them fish there?

A. Well, I could not just for the last few years—I haven't been

up there much, but I used to be pretty well acquainted, I used to when I was boating at The Dalles, on Sunday doing nothing, I used to get a horse and ride out and look along there and see.

Q. Did you watch them fish, as I understand?

A. Yes.

Q. What means did they use for fishing?

A. Why, they had—there was some of them had—sitting on poles out like that and dipping with dip nets; and then there was some kind of a long net I would see them have on the water. They called it a seine, I guess.

Q. Did you see them fish with any other means?

A. I couldn't say that I did.

Q. Where did the Indians come from?

211 They came from their homes.

Q. Where were their homes?

A. In Yakima, and in all up back of The Dalles out to Warm Springs, and there would be some from Hood River up there, and there would be some Indians from Cascades down there. They marry, and there will be Indians from Cascades that is married into a family at The Dalles, and he would probably go up there and be there. One year he would fish there. And maybe then they would go back to the Cascades and they would live down there, and they come and go. They will stay a week or a month or a year or two years. And then again when they got ready, they went. They never asked anybody that I know of.

Q. Where would they fish around Three Mile Rapids?

A. Well, as near as I can figure, it was about what they call the Big Eddy.

Q. The Big Eddy?

A. Somewheres right there. Along there somewheres.

Q. Do you mean that Three Mile Rapids and Big Eddy are the same, Mr. Underwood?

A. Well, one is the eddy, ran up to a point, and then from that it will be a rapid there.

Q. You don't refer to the place on the Columbia river known as Big Eddy, as I understand?

A. Yes, sir.

Q. Oh, you refer to that place as the same as Three Mile Rapids?

A. Well, that is where I used to go to. I don't know what you call the Three Mile Rapids.

212 Q. Do you know the first rapids above The Dalles?

A. Yes. There is two or three rapids up there, but the first rapids, I forget just exactly how that is, but I have been over on both sides of the river there.

Q. Can you see this map, Mr. Underwood?

A. I can see some marks there.

Q. Can you read that?

A. The Dalles.

Q. Taking that as the city of The Dalles, and going on up the river, do you know where Seufert's cannery is located?

A. Yes.

Q. It is in evidence that Seufert's cannery is located here. Did you ever know of Three Mile Rapids as being between Seufert's cannery and The Dalles?

A. I have been all through that, all through them places, and seen them fishing all the way up, and I never knowed anything about Seufert's cannery, just where it was, until I was up there when the boats come through there last June, or was it May; and then I saw where Seufert's cannery was; but I never bothered myself about it. But I have been up there many a time and it seems to me they could fish there anywhere around there.

Q. Have you seen them fishing on those rapids between Seufert's cannery and The Dalles?

Mr. Bennett: He has not said he knows there was any rapids there, or whether he knows there was any rapids there. I don't think he ought to lead the witness. The Court can see how dangerous it is. They led him to say he saw them fishing at Three Mile Rapids. Then when he goes to state it himself he says, up about the Big Eddy.

Court: If he can locate it himself, let him do it.

213 Q. Do you know of rapids between Seufert's cannery and The Dalles?

A. There was fishing along there, and I know old man Henry Gulick fished there. I think there was some sort of rapids there.

Q. Do you know what those rapids were called?

A. I did at the time, but I just cannot think of the name now.

Q. Did you ever see Indians fishing in there where you speak of Gulick having fished?

A. Gulick?

Q. Yes.

A. Yes, Gulick fished there and caught fish many a time; had a boy drowned there.

Q. Did you see Indians fishing there?

A. Oh, Indians.

Q. Yes.

A. I would not—I suppose they did but I would not be positive about it. I would not say, but I know in my own mind that they did, but I wouldn't swear to it.

Q. Do you recall whether or not you ever saw any there?

A. I am satisfied I have; but when I was there I paid so little attention to such things, never knew I was going to come into trial on it. I have been up through it many times. I have seen them fishing on either side of the river all the way up.

Q. What were the relations of the Indians there, as to whether they were friendly or not, those Indians that you spoke of as coming from above and those from The Dalles, Cascades, and Hood River all through there?

A. I never knew of any trouble among them at all, any
214 fighting or anything like that.

Q. Well, you said you don't know of any trouble. Then there must have been what relation existing between them?

A. Why, the Indians come there and caught all the fish they wanted and then go home to where they lived, different places.

Q. Were they friendly or not, would you state?

A. They were friendly.

Q. When they came there to fish, Mr. Underwood, where did they stay?

A. Stay?

Court: That is, while they were fishing.

A. Well, I never asked them and never waited to see, but an Indian don't have to bother about a place. He will lay right down there if you will let him and catch salmon and eat them.

Q. Did you see any of them stay around the fishing places?

A. There was some little smoky huts and smoky canvas places there, and there was I think some little places that was made out of, just kind of little box houses; but there was no very permanent houses there.

Q. Where were those, do you recall?

A. Well, I couldn't—they was all along up there, and I haven't been up there for so long.

Q. State whether or not, Mr. Underwood, there was any general name for that portion of the country there where you spoke of having seen them fish all along?

A. Well, there was named, but I just cannot call the name.

There was Three Mile Island, and there was Five Mile, and
215 different places out there, and there was islands where they went in where there was fishing grounds.

Q. Fishing grounds. Was there any particular name for the fishing grounds all through that rapid water above The Dalles?

A. I would not like to say how that was, about that. Of course I knowed then, but I could not tell so positive now, you see.

Q. As a boatman, did you ever observe any whether the Indians boated on the river there, or what they did?

A. Up there?

Q. Yes.

A. No; they had canoes and some of them had skiffs.

Q. Do you know whether or not they crossed the river in those canoes anywhere above The Dalles and below Seufert's cannery?

A. Yes, sir, they crossed there.

Q. Do you know where they crossed? Do you recall?

A. I couldn't just tell, but I have been both sides of the river there many a time, and there wasn't very many people living there. I have seen them fishing on both sides.

Q. You have seen them cross over there in their boats?

A. Yes, sir. And then there were places, kind of rocks or islands out in the river, and they will get in something like that, pull up and shoot out from there, and vice versa on either side. But I cannot tell just where that was. I haven't went to see it since it came up, this trouble.

Q. When did the Indians stop fishing there, if you know?

A. I don't know that they ever stopped. I don't believe they ever will, either.

Q. Do you know where the best fishing is at different times
216 of the year through those rapids, Mr. Underwood?

A. No, I don't know a thing like that. It is too long ago now. I have not been up in that country for quite a long while you know.

Q. It was what you early knew about it that I was more interested in.

A. Well, it is a good many years ago, you know.

Q. Did you know the custom of the Indians at the time you went there, as to whether or not they observed the boundaries such as we designate now the north bank and the south bank?

A. Well, I kind of believe the idea was, kind of tribes that had—whether they got it by possession or how—but they would go about the same place every year and fish there.

Q. Yes. And if the fishing was in one place better than another, would they go to that best place consistently or not?

Mr. Bennett: That is very leading.

A. I couldn't say they would, but if they had good sense they certainly would.

Q. You don't know?

A. No.

Q. Do you know whether or not, Mr. Underwood, the north Indians that came up here from the north, always stayed on the north bank, or did they cross over and fish on the south bank?

A. Well, there was Indians crossing and fishing. I didn't know which way they come from or which side they belonged to, but they was crossing over there.

Q. Crossing back and forth all the time?

A. Yes, sir.

Q. Have you yourself ever crossed back and forth the river up above The Dalles and below Seufert's cannery?

A. I don't hear very good.

Q. Have you yourself ever crossed the river up above The
217 Dalles and up above Seufert's cannery, away on up to Big Eddy, have you ever crossed back and forth any place there?

A. I had a good deal of work to do in my time there. It would be a little bothersome to tell you. I have been there, and I think they wanted to put a ferry on John Day's river, and I got a boat I had at Hood River and took it up there, and I had the Indians to help me. I crossed over there and we took it up that shore up to the falls, and they helped me to pull it over the falls and pack it around and put it in again.

Q. That is not what I am after, Mr. Underwood. I want to know whether you ever crossed from one bank to the other up there. Did you ever cross back and forth from the Oregon shore to the Washington shore?

A. Not right there, until I would get up above Celilo.

Cross-examination.

Questions by Mr. Bennett:

— Where was it, Mr. Underwood, that you say you took a boat up? Whereabouts? From The Dalles up?

A. Yes. John Morgan, he lived down at Hood River, and he built a boat and we took it up there, and I got the Indians helping and we took it up, crossed over at The Dalles, crossed there, had the Indians help me, got it over on the Washington side, and we took it around that, and then I took it up in good water above there, and then I went up there at Celilo, and I went on up, and clear up the river, till I got to the mouth of John Day's river.

A. Now, you say you had the Indians help you. Did they have ropes and cordelle it around the rapids?

A. Yes.

Q. You say you never crossed the Columbia river except at the ferry at The Dalles and up above Celilo?

A. Yes, sir, I said so.

Q. You crossed a good many times at those places, haven't you?

A. Oh, yes.

218 Q. That was the usual place of crossing, at the ferry at The Dalles and up above Celilo?

A. Yes.

Q. That has always been, ever since you have been in the country, the usual places of crossing there, hasn't it?

A. I know they crossed there.

Q. Well, that has been the usual place of crossing, hasn't it?

A. I know they crossed there.

Q. Well, that has been the usual place of crossing, hasn't it?

Mr. Rankin: Usual for whom?

Mr. Bennett: Well, for everybody?

A. They could cross there. I don't know how many crossed there.

Q. Wasn't that the usual place for crossing where everybody, Indians and white men and everybody, crossed usually at The Dalles and up above Celilo?

A. Well, I will just say this, that I have seen people crossing there.

Q. A great many people crossing at those two places, haven't you?

A. Well, not many. It wasn't necessary.

Q. What?

A. It wasn't very safe there. It wasn't necessary.

Q. It wasn't very safe?

A. Crossing there. They just took—just anybody couldn't cross. It wanted somebody that was a pretty good boatman.

Q. Anybody could cross down at The Dalles, couldn't they?

A. Oh, yes, down there at Rockton.

Q. But up at Celilo it was not so easy?

A. No.

Q. There it was rather dangerous?

A. Yes. Well, I would say it was dangerous, but still they crossed. There was no danger down at The Dalles.

Q. But it was some danger up at Celilo and took a pretty good man to cross there?

219 A. Yes. A man ought to know what he was doing to cross there. And the same way today.

Q. The water was pretty still up there, but if they didn't look out they might get sucked down into the rapids?

A. Well— —

Q. Is that the danger, that they might get sucked down into the rapids?

A. They might get struck with lightening.

Q. Well, was that the danger you speak of?

A. Oh, that is the supposition. If they got down in there, if they didn't know what they was doing, they would get drowned.

Q. And the danger was they would get carried down into the rapids?

A. The danger was, if they got into a bad place they might get drowned.

Q. Now, there has always been a ferry at The Dalles ever since you have been in the country, hasn't there?

A. Yes, sir.

Q. Ever since 1852?

A. Yes, sir. Well, I wouldn't say just that. They could cross but I don't know whether there was a ferry that early. It was a year or two after that.

Q. I see. As early as 1854 anyway, you think?

A. Yes.

Q. Now, Mr. Underwood, does this look like the Big Eddy to you on the map here, the river coming up here, and this being the Big Eddy here, and this the narrows or dalles, Five Mile Rapids, Tumwater. Lower Tumwater? Does that look like Big Eddy to you there?

A. I couldn't say. I am not much of a judge about these matters.

Q. Well, now, above the Big Eddy the river comes through a narrow gorge between the rocks for about a mile and three-quarters, don't it?

220 A. Well, I wouldn't say that.

Q. It goes for quite a ways there, doesn't it?

A. Yes, sir.

Q. You don't know the distance?

A. No.

Q. That is where they say it looks like a river running on edge. That was known in the early days as The Dalles, wasn't it, the dalles of the Columbia—that narrow place where the water swept through there?

A. Well, I couldn't say that. I don't know what they called it, but I know there was a swift place down through there. But I don't know exactly what they called it.

Q. Now, then, the fishing as I understand you that you saw was mostly about the Big Eddy there, of the Indians.

A. Somewheres along there.

Q. Yes. And was it on that rapids above the Big Eddy where the water was swift and came over the rocks there.

A. Well, I wouldn't want to say. You see, I am old now—my memory—it has been a good while.

Q. You don't remember about that?

A. I am 81 years old, and I have been up there a good deal, around on both sides of the river, and I was never looking for no object only just to have a horse ride. I don't want to tell anything but what is right.

Q. I see. Well, now, you knew where Celilo was, didn't you?

A. Yes, sir.

Q. You remember where that was?

A. Yes, I have been there many times.

Q. You have been there lots of times, haven't you, at Celilo?

A. Yes.

Q. Now, wasn't that a great Indian fishing place there at Celilo?

A. I kind of believe it was.

221 Q. Yes. That was where a great many Indians fished, where those little channels run through the rocks there?

A. Most of the fishing that I know of would be, I think, not far from where Seufert's cannery is there.

Q. Not far from where Seufert's cannery is?

A. Not a great way from there.

Q. And up in the neighborhood of the Big Eddy?

A. Somewheres along there. I ain't been up even to look.

Q. And on both sides of the river you saw Indians fishing?

A. Yes, sir.

Q. You didn't know where they came from, whether they were Yakimas or Wascos?

A. No. Well, I could say this, that I knowed some came from Simcoe, and some of them go out there, but I don't know how many.

Q. And you don't remember on which side of the river they got their fish; those that went to Simcoe, you don't remember on which side of the river they got their fish?

A. I wouldn't say which side they got their fish; but I have seen them packing fish for Simcoe way.

Q. Yes, you have seen them packing fish over to Simcoe.

A. Yes.

Court: Where is Simcoe?

Mr. Bennett: It is on the Yakima Reservation, and away out about 60 or 70 miles. This is an estimate. I never was there, but I know in a general way it is about 60 or 70 miles northeast of The Dalles.

Mr. Rankin: The headquarters of the Yakima Reservation, Fort Simcoe is the headquarters of the Yakima Reservation.

Mr. Bennett: Yes.

Court: Very well, I understand.

Q. Now, Mr. Underwood, you know, don't you, that the Yakima Indians lived on the north side of the river?

222 Q. You know that the Yakima Indians lived on the north side of the river?

A. I know lots of them did. I don't know they all lived on that side, but that was the Yakima side, you know.

Q. Well, you know that was their country over there on the north side, don't you, the Klickitats and the Yakimas?

A. Yes. There was a place there, well, there was one place below The Dalles there they called Colwash, and then one place above—I have been there many times, but I don't know just what they call that place.

Q. I am asking you if you don't know that the Yakima and Klickitat Indians lived on the north side of the river, that that was their country over there on the north side?

A. Yes, that was their country over on the north.

Q. And the Wasco Indians, their country was on the south side of the river, wasn't it?

A. Yes.

Q. Now, then, did the Klickitat Indians and the Yakima Indians talk the same language?

A. They can, but there is two languages.

Q. What say?

A. There is two languages, but either tribe can talk the other's language up there.

Q. They can talk back and forth?

A. Yes.

Q. Well, can all of them talk, or just some of them?

A. Well, I couldn't—of course I don't know that.

Q. That is the Klickitat and the Yakimas?

A. My opinion is they couldn't all.

Q. They couldn't all talk back and forth. Now, then, the Wascos talk a still different language, don't they, from the Klickitats and the Yakimas? The Wascos talk a still different
223 language?

A. Yes, sir; they talk a still different language.

Redirect examination:

Q. Do you know whether the Wasco Indians could make themselves understood with the Yakima Indians or not?

A. Oh, of course they could. They have been there hundreds and thousands of years, and they all—they understand each other and can talk together.

Q. You spoke about Colwash. What is that, Mr. Underwood?

A. What?

Q. You spoke about Colwash, didn't you, down near The Dalles?

A. Colwash.

Q. What is that?

A. Chief Colwash, he always had a big place—about, it seemed to me about two miles below where the ferry crossed there at The Dalles.

Q. At The Dalles?

A. Yes.

Q. What tribe did Colwash belong to?

A. Well, they was, I think, the same as, I believe the same as the Cascade Indians; and about half and half of the two tribes, Cascade Indians and Dalles Indians,—Colwash Indians.

Q. Do you know those various places along the river called by the different length of the rapids, such as Ten Mile and Five Mile?

A. Well, I wouldn't want to say I do know. Of course, long ago I could have answered you, but now I can't.

Q. You stated on your cross examination that most of the fishing you saw was down here near Seufert's cannery?

A. Yes.

Q. Was there fishing below as well as above there?

Mr. Bennett: That is leading. He has gone all over that besides.

Court: He can answer that.

A. I answered that. I told you they fished on below. I think Gulick's place was below. I know he fished lots.

224 Recross-examination:

Q. I wanted to ask you another question. The Klickitats were a very warlike and brave tribe, weren't they?

A. Well, I don't know as they were any better or any worse than any of the other Indians.

Q. Well, didn't they used to make raids clear down to the Willamette Valley on the other Indians, and in about Oregon City there?

A. Not that I know of.

Q. You don't know anything about that?

A. No.

Excused.

TOMAR HANDLEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Charley Pitt Sworn as Interpreter.

Direct examination.

Questions by Mr. Rankin:

Q. What is your name?

A. Tomar Handley.

Q. Where do you live, Mr. Handley?

A. Warm Springs.

Q. How long have you lived there?

A. I have lived there all my life.

Q. What tribe do you belong to?

A. I am a Wasco.

Q. Have you any position among your tribe on the Warm Spring?

A. I am a stock raiser and a farmer.

Q. Has he any official position or office?

A. Yes. I am a Judge of the Indian Court.

225 Q. Where were you born?

A. On Mill Creek near The Dalles.

Q. Ask him if he knows where Seufert's cannery is.

A. I do.

Q. How near to the cannery were you born?

A. I could not say the exact distance, how far it is from Mill Creek to Mr. Seufert's cannery. I don't know the exact distance.

Q. Is it near or far?

A. Well, he says, I think something along about six miles, perhaps, more or less.

Q. Did the Indians ever fish near the cannery?

A. Yes, they did.

Q. What were the particular fishing places along the Columbia river near the cannery?

A. Right there at what the Indians calls Wah-sucks.

Q. What do the white people call the place that the Indians call Wah-sucks?

A. Pine Tree.

Q. Pine Tree?

A. I think that is what they called it, the white people.

Q. How far above The Dalles was the place called Pine Tree or Wah-sucks?

A. I hardly know that either. It is either two miles, or more or less; something that way.

Q. What kind of water there, rough or smooth?

A. There is rapids there.

Q. Was that below or above the point called Seufert's cannery?

A. Below.

Court: How far below?

A. I think it is along about three-quarters of a mile below Mr. Seufert's cannery.

Q. I am going to put this question: See if he understands it.

Suppose you have a line from Seufert's cannery down to

226 The Dalles, would it be north or south of that line? Do you understand that, Charley?

Interpreter: No.

Q. Of a straight line drawn from Seufert's cannery to The Dalles?

Interpreter: I think I understand.

Q. Do you understand it?

Interpreter: Yes.

A. The line would bear toward east up the river.

Mr. Bennett: How is that?

A. The line would bear toward east, up the river eastward.

Mr. Rankin: It is not an answer at all.

Q. Ask him if he knows what the whites call Three Mile Rapids?

A. Yes.

Q. Ask him whereabouts Wah-sucks or Lone Pine was, with regard to Three Mile Rapids?

A. The Wah-sucks and the Three Mile Rapids is right down to the river—this Wah-sucks is down to the river, right off down there.

Q. What does he call Wah-sucks? Is it the place where they fished, or anything else?

A. No. Wah-sucks means the Lone Pine, which it was called by the people of the past, Indian people.

Q. Indian people of the past?

A. Yes. It means a lone tree. That is what Wah-sucks means.

Q. What Indians fished at Wah-sucks?

A. Wascos.

Q. Any others?

A. And the Indians on the Washington side.

Q. What tribes from the Washington side fished there?

A. The Yakima Indians from the Washington side, and Wisham, and the Wascos, fished there together.

Q. Were they friendly or not, as they fished there?

A. They were always friendly and peaceable.

227 Q. How did the Indians from the north side cross over?

A. They used to cross in small canoes which they dug out of trees.

Q. Where did they cross?

A. There is one crossing place at Wah-sucks.

Q. Whereabouts?

A. Called Til-mich-tich; it means eddy; in English terms an eddy. They crossed there.

Q. Did they cross any place else beside there?

A. Then there was another place where the Indians crossed, at the mouth of the Five Mile creek, a little above Mr. Seufert's cannery. They crossed there too.

Q. I believe I omitted to ask him how old he was. How old are you?

A. 36.

Mr. Bennett: How old?

Witness: 63.

Interpreter: I misunderstood him. 63.

Q. Did the Indians on the Yakima side consider that they could only fish on the north side of the river?

Interpreter: That was your question, Yakima Indians?

Q. Did the Indians on the north side of the Columbia river think that they could only fish on the north side?

A. No. They fished on their own side, on the Oregon side, and fished on this side too.

Interpreter: I mean they fished on the Washington and on the Oregon side, too.

Court: Ask him why the Yakima Indians came on the Oregon side to fish.

A. This side was the earliest fishing point. That is why the Indians from the other side came over, because that was the earliest fishing place.

Court: What was the earliest fishing place—Wah-sucks?

A. Yes.

228 Court: That was the earliest fishing place?

A. That was the first place where the salmon began to run.

Court: Why did they continue to come on this side when they afterwards had fishing grounds on their own side?

A. The river changes its channel at certain times of the year. Some times the water is too high; they cannot fish. Sometimes the water is too low; they cannot fish. And wherever the water is right to the fishing places, that is where they go to fish.

Court: And that is the reason why the Indians passed from one side to fish and then the other side to fish?

A. Yes. You have got the idea, yes.

Court: Well, now, ask him this: Did the Wasco Indians ever object to the Yakima Indians coming across to fish at Wah-sucks?

A. No.

Court: Well, did the Yakimas ever object to the Wascos going over on their side?

A. No.

Court: Did you ever fish there at Wah-sucks?

A. No, I have never fished, but I have been there.

Q. Why didn't the one tribe, either the Yakimas or the Wascos, object to the other tribe fishing there? Why didn't they object?

A. Well, they were friendly, and they were related, through marriage.

Q. Ask him if the Indians, in his personal knowledge, ever felt that they were bound to the bank of the river on their own side?

A. He says, tell the gentleman for me that our country in the olden times was free, unsurveyed, no boundaries. The whole country was free, and we used the country as it laid before us.

Q. When did he first remember seeing Indians fish at Wah-sucks?

A. From my boyhood up I have seen the Indians fish there.

Q. When did he last see the Indians fishing there, Yakimas?

A. He says that I seen them fish there when I was a young man. But after that I was taken out to the Warm Spring Reservation and there I became a farmer, and my interest was at the Reservation. I didn't come very much more to Wah-sucks.

229 Q. During the time that he saw Indians from the north side fishing at Lone Tree; with what regularity did they come there to fish?

A. They came to fish.

Q. With what regularity did they come there to fish? Do you understand what I mean by regularity, Charley?

Interpreter: I don't quite understand it, no.

Q. Regularity. Did they come at regular times, certain times every season? Or did they come at different times altogether?

A. He says Indians crossed backwards and forwards between the fishing times, too, as well as fishing times.

Q. Ask him if they fished every fishing season there or did they omit seasons?

A. They fished regular. Of course, some years more than other years. Some years it would be few and some years it would be more Indians come.

Q. How did they fish?

A. He says dip net fishing.

Q. Any other way?

A. Sometimes they fished with spears.

Q. Tell him to describe an Indian fishing spear.

A. A spearing pole is a long pole, a small light pole, long pole, perhaps 15 or 20 feet long; and there is two smaller hard wood is fastened on the end of this long pole; then the iron part that goes through the salmon is placed on the end of these sticks, and they throw the spear into the salmon. He says it is forked; this spear has a forked end, two points to it.

Q. How do they get the salmon out then?

A. The point of the spear is just in such a shape when they throw the spear into the salmon and the points pull out, and when the Indian pulls on the string that is fastened to the point, it crosses the spear through the salmon flesh; both points crossing then they pull him out that way.

Q. Tell how that string is fastened on to the pole. That is
230 the first time he has mentioned the string or rope.

A. He says the pole and the two sticks are fastened on each side of the pole with a string, tight. Then also there is two strings fastened to the spear points, and that is fastened to the pole too; and it slips over the wood part just so it just stays; and whenever they spear the salmon, when they jerk it away it pulls off, because these points are fastened on to the same pole that he spears with.

Q. How do they pull the salmon out?

A. He says that whenever they pull on the salmon, why, these spears kind of crosses the flesh of the salmon and they pull him out.

Q. What I want to know is, do they pull him out with the pole or do they pull him out with the string or rope?

A. Pull him out; as the salmon jumps on, of course, they pull off, and they pull it out by the string.

Q. How far could you spear a salmon to pull him out with that salmon spear of the Indians?

A. Some Indians that understand spearing them can throw a spear as far as from here to the door, and catch the salmon; and some closer.

Q. That is about 24 feet.

A. Yes, 23 or 24 feet.

Mr. Bennett: I don't think it is that much.

Court: Well, I can see.

A. Excuse me.

Q. Will you explain what an Indian dipnet is?

A. How do you mean?

Q. Just tell the court what an Indian dip net is, and how the Indians work a dip net for catching fish?

A. He says that Indian dip net is also fastened on a long pole; a long pole, and there is a separate and smaller stick, perhaps an inch stick, that is fastened on to the pole again, only it is bent in a kind of hoop or oblong shape; and the netting is first fastened on to the pole that is bent; and the pole or the hoop—it is something like a hoop, but it is kind of an oblong—and the net
231 is fastened on that and the net of course then hangs down.

And that is the dip net that they put in the water at the salmon places where the salmon runs.

Q. How do they catch the fish with that net—how is it operated?

A. He says that there are certain places where salmon used to run known by the Indians, and that is the only places where they fished with this dip net. They throw the dip net over the places where the salmon run and salmon gets into it. It is only certain places; not every place.

Q. Why doesn't the salmon see the net?

A. Well, that is the part that we never consulted with the salmon, why he didn't see it. He knows his way where he has gone for ages, salmon before him. He runs up there; it don't matter how many dip nets, but he goes up there anyhow.

Q. Well, if the salmon saw the net he wouldn't run right into it, would he?

A. Sometime he turns off, of course.

Q. Which one of these, or did he see both of these implements used at Lone Tree?

A. Which one was what?

Q. Which one, or did he see both of these implements?

A. That he seen?

Q. Yes, at Lone Tree.

A. I have seen dip nets first used there.

Q. Did he ever see the spear used there?

A. The spears are used when the water falls away down to certain places where they spear.

Q. I want him now to tell the court just what he saw; just how the Indians fished off of the rocks at Lone Tree; just what he saw there; how they operated; how they worked.

A. I have stated to the court that the fishing places is not every place. It is only certain places where the fishing places are. Sometimes Indians can stand on the rocks, upon the rocks, and
232 fish over the fishing places. Sometimes Indians will build a platform away out this way, away out here, and fish out, away out.

Q. Overhanging the river?

A. Yes, over that way. And if they have got a net, they will tie the net on the lower side of this platform on the rock, so that

if they should let it go it would not get away; but this platform is built out this way, and it is fastened with a great many rocks piled on here so it is safe; and they go away out here and fish out here.

Q. Is that the way he has seen them fish at Lone Tree?

A. Some of them fished that way in the olden times, and some stood on the rocks and fished right alongside of the bluffs.

Q. How would they get down close enough to the river to fish?

A. They wait until the river rises up off the rock, stands high, why the river comes up so as they can reach it with the dip nets, why, that is where they will fish. The water comes up and down, and they work according to the way the water may be.

Q. Does he know Sam Williams?

A. Yes.

Q. How long have you known Sam Williams?

A. I have known Sam Williams quite a while; I think pretty close to 20 years that I have known Sam Williams. Yes, that is about the time I saw him.

Q. Have you ever seen him fish at Lone Tree, or not?

A. I have seen him different times.

Q. Have you ever seen any other Yakima Indians besides Sam Williams fish at Lone Tree?

Mr. Bennett: That is very leading.

Mr. Rankin: I do not want to lead now, Judge. Believe me, I am earnest. But how can I ask——

Mr. Bennett: You can ask him what other Indians he has seen.

233 Q. What other Indians have you seen fish at Lone Tree?

A. You mean at the time that Sam Williams was fishing, or what do you mean?

Q. Any time.

A. He says, tell the gentleman that I had seen Indians from the other side of the river fish in my younger times, if I remember right, that is what I said. But after the Indians were taken out to the reservation, why, I didn't come to this fishery very often. Of course, I have been there different times, but since we have been taken out to the reservation I don't remember of seeing the Yakima Indians of these late years.

Q. Ask him to name some of the Indians—give their names—whom he has seen fish there, and the tribe to which they belong.

Interpreter: When do you mean?

Q. At any time in his early years that he testifies to.

A. I can name perhaps three men: Bill Charley's father, and George Me-nin-ocht's father, and Smiscon. He says now these old men are all dead, but their children are alive today. The men that fished, their children are alive with us today, some of them.

Q. To what tribes did these men belong?

A. These two Indians that I have mentioned from Wish-ham, and George Me-nin-ocht that I mentioned, his father was a Yakima.

Q. Does he remember any other Indians by name whom he saw fish there? Tell him to take his time and think.

A. None of the other party, but I remember the Indians from this side.

Q. Remember Indians from his side?

A. From this side, yes.

Q. With which we are not concerned. When did he see Sam Williams fish there?

A. 1910, I saw him there.

Q. How was he fishing in 1910?

A. I believe that he was fishing with a wheel then, 1910 and 1911, if I remember right.

Q. Did he see him fish there before 1910 at all?

234 A. I saw him quite before, fishing with a net before he had a wheel.

Q. He said something about 1906.

Interpreter: 1906, yes, and 1907.

Q. 1906 or 1907?

A. And 1907.

Q. Did he see him fishing at any other years after 1911?

A. With nets or what?

Q. Any way.

A. Yes, he was there at that point; he lived there at 1913, he was there during that time; but as I said, I was not there all the time; I was at home most of the time.

Q. Do the Indians fish there now as they used to at the time when he remembers in his younger days?

A. Oh, no. No, they don't.

Q. Why?

A. Well, the place has been fenced up by Mr. Seufert. It is all under fence.

Q. What can he say with regard to the marriage relations of these tribes—those residing on the north and those residing on the south bank of the river?

A. He says, that, as I have stated before, there were relations by marriage for many years back, even before my time, and their children *is* among us today.

Mr. Bennett: How is that?

A. Their children *is* among us today. They were related by relation before my time.

Q. Related by marriage?

A. Yes, by marriage; and their children are among us today.

Q. Now, what do you say with regard to Wah-sucks being an important place or not for fishing?

A. The old Indians did regard Wah-sucks fishing place was the most, used the most and used the earliest and the best.

Q. Why was it used the most?

A. Why, he says, because the early fishing began there and the most salmon run there. The salmon run in the earliest
235 time and the most salmon run there.

Q. He has testified to two places where they crossed the river. Ask him whether or not these places were named.

A. Where do you mean on the river?

Q. On the river near Mah-sucks.

A. One crossing place called Til-mich-tich.

Q. What was the other named?

A. Then I thought of another place. It is above Mr. Seufert's cannery, quite a piece above, call Na-kuch-nuch, Choke Cherry crossing.

Q. Were there any other crossing places for Wah-sucks fishery?

A. Now, I don't know this myself, but I have heard there was another crossing below Wah-sucks, below the rapids.

Q. Did it have a name?

A. I don't know the name of that.

Q. What do you say about crossing at those places at any time?

Interpreter: How do you mean?

Q. During any stage of water?

A. He says the Indians crossed the river there at those different points I have mentioned mostly any time. Only when water was too high they would not cross there either way; except above Tenino at the narrows. Above Tenino they crossed there at any time.

Q. I don't know where Tenino and the narrows is. Can he tell me any American name for the place there?

A. This point has no English name that I know of, or Indians before me knew any English name of this point which I speak of above. But he says that this what I speak of above Tenino is right below the Dead Island, where the Indians used to bury their dead.

Q. Memaloose?

A. Memaloose Island, yes; up there.

Q. How generally was Wah-sucks patronized? In other words, what tribes met there?

236 A. Being that you have asked the question, the Indians from the Cascades, Indians from the upper part of the Columbia river, the Indians from Yakimas, and various Indians, scattering Indians up and down each side of the river, came there together; came there together, yes.

Mr. Rankin: Your Honor, during the short recess of the court, counsel for both sides took an estimate of the distance from the chair to the door, and we are willing to agree that it is between 15 and 16 feet.

Mr. Bennett: That that may be entered in the record as the distance that the witness gave.

Mr. Rankin: I stated 24.

Cross-examination.

Questions by Mr. Bennett:

You talk pretty good English, Mr. Handley. You understand 1913 and 1914, and all that?

A. Not very good.

Q. Not very good?

A. Yes. Some words; long words I cannot pronounce good, and

some hard words I do not understand. That is the reason I depend on this interpreter.

Q. Well, I will just talk to you without the interpreter.

A. No.

Q. I will ask you this question first: Whereabouts on the Warm Springs Reserve do you live? Where is your place?

Interpreter: He wants you to do your talking.

Court: You answer him if you can. If you cannot, if you are not certain, why, say so.

Mr. Rankin: I don't know as he understands you, Judge. I will ask the interpreter to tell him to answer Mr. Bennett's questions as far as he understands; if he don't understand, say so.

Interpreter: He says he can't answer.

Q. He can surely understand that place. Do you say you
237 are in the stock business and farming?

Interpreter: Yes, that I understand.

Mr. Bennett: Well, now then, you just keep still and let me talk to him.

Q. Whereabouts is your farm—is it on the Warm Springs Reserve? Is your farm on the Warm Springs Reserve? Your place where your cattle are, and your farm. You understand the Reserve, don't you—Reservation?

Witness speaks in Indian.

Q. You understand the Reservation, don't you, what the Reservation is?

A. Yes, I understand the Reservation.

Q. Now, is your farm on the Reservation?

A. Yes, inside the Reservation.

Q. Inside the Reservation. Now, about how old were you when you went to the Reservation?

A. How old I was when?

Q. Yes, when you went out to the Reservation to live.

A. I was little fellow, about 10 or 12 years old, when I went up to the Reservation.

Q. I see.

A. Yes.

Q. And who was the Indian Agent at that time when you went out there?

A. I don't remember. I was small and careless, you know; careless boy. That I don't remember.

Q. Well, who was the first Indian Agent that you remember out there?

Witness speaks in Indian.

Interpreter: You will have to ask the question again.

Q. Who was the first Indian agent that you remember out there?

A. I don't remember.

Q. You don't remember?

A. Yes.

Q. Who is the Indian agent out there now?

A. Reynold, now.

Q. How long has he been there?

A. Since last summer.

238 Q. And who was there before him?

A. Hall.

Q. How long was he there?

A. How long Hall, he was there?

Q. Yes.

A. I don't remember the years, how long.

Q. Was he there a good many years—Hall?

A. Oh, not many years; about five or four years, maybe. I don't remember exactly.

Q. Four or five years?

A. Yes. I don't remember exactly.

Q. Now, who was there before him?

A. Covey.

Q. And about how long was Mr. Covey there. About how many years as near as you can remember.

A. Well, I don't remember. Eight or seven years, maybe.

Q. Seven or eight years. And who was there before him?

A. I guess Mr. Kirk.

Q. Kirk?

A. Kirk.

Q. And how long was he there?

A. I don't know how long he was. I don't remember the years.

Q. Well, about as near as you can tell. Was he there a good many years?

A. Well (talks in Indian).

Mr. Bennett: You never mind the Interpreter. You talk to me.

Interpreter: He says I am not talking about the Agents, he says. I am here to give my testimony about this here.

Mr. Bennett: No, I know you are not. But he talks to you. He wanted to ask you about it; and I don't want him to do that; I wanted him to talk to me. I am not questioning about your interpreting, at all; but I want to talk to him if I could.

Interpreter: I wish you could.

Q. Now, about how long was he there?

A. I don't hardly remember the years.

239 Q. Was it several years—a good many years?

A. No, not a good many years; about—

Q. Well, do you remember any other Agent before him?

A. There was a good many agents before him.

Q. Well, do you remember any other Agent before him? Who was Agent before him?

A. There was one, but I forget his name, before him.

Q. Can't you think of his name?

A. I can't think of his name.

Q. Well, was there more than one before him?

A. Oh, more than one.

Q. Well, who else that you can remember,—if you can't remember that one's name.

A. I can't think of their names.

Q. You can't remember their names?

A. Yes, I can't remember their names.

Q. Did your father and mother go out there on the reserve with you?

A. No, sir. My father and mother died down to where I was born.

Q. Down where?

A. Down to The Dalles where I was born.

Q. Oh, they died down there on Mill Creek?

A. Yes. I was born down to Mill Creek. And my father died there and my mother died there. They were buried down to The Dalles there when I was little boy.

Q. That was before you went out to the Reserve?

A. Yes, sir.

Q. Now, was your father a fisherman?

A. Yes, he was a fisherman.

Q. Where was his place of fishing?

A. All along from Wah-sucks, all along the fishery there. My father he used to fish there.

Q. Up as far as Celilo?

A. Up as far as Tenino, they call the place.

240 Q. Do you know where Celilo is?

A. I know where Celilo is.

Q. Did your father fish up to Celilo?

A. No, sir. He never got up there because his fishing place as far as from Wah-sucks as far as Tenino.

Q. You have been up to Celilo, haven't you?

A. Oh, not very often; once or twice; maybe twice.

Q. How far was Tenino above Mr. Seufert's. You know where Mr. Seufert's cannery is now?

A. Yes, I know.

Q. About how far was Tenino above Mr. Seufert's cannery?

A. How far?

A. Yes.

A. What place you mean, Tenino?

Q. Tenino. How far was it above Mr. Seufert's cannery?

A. Well, I don't know, about, by guess—oh, about four or five miles, maybe, above.

Q. Four or five miles. Do you know where the Big Eddy is? Do you know where the place is they call the Big Eddy?

A. Yes, sir; I know.

Q. That is above Mr. Seufert's cannery, isn't it?

A. Yes, it is above Mr. Seufert's cannery, above that a little ways.

Q. Then above the Big Eddy there is a narrow rapid, isn't there, where the water runs through between the high walls above the Big Eddy?

A. Yes, above.

Q. And that narrow rapids extends up a mile and a half or two miles above the Big Eddy, don't it?

A. I guess so. I don't know. I guess so.

Q. Well, is that the way you remember it.

A. I don't understand this. Let the Interpreter interpret me.

Q. Well, you have testified about miles—You know how much a mile is, don't you? Was it about two miles? Did this rapid extend about two miles above the Big Eddy?

Mr. Rankin: Let him answer that question about a mile, 241 if you will.

Mr. Bennett: All right.

Q. You have testified about miles here. Do you understand above a mile?

A. From Big Eddy and where?

Q. Do you understand about how far a mile is?

A. No, I don't understand about miles; just by guess; I said a mile.

Q. Well, that is about all any of us can do. You have an idea about how far a mile is, haven't you. Now, how far from the Big Eddy does that rapid extend—how many miles? About two?—up the river from the Big Eddy. How long is that rapid above the Big Eddy?

A. I don't know how long that rapid is.

Q. Well, now, was Tenino above that rapid?

Interpreter: He don't know what rapid means.

Q. Was Tenino above the rapid, the next rapid above Big Eddy? Was Tenino above that rapid, further up on the river than that rapid?

A. I don't understand what rapid means?

Court: He does not seem to understand the meaning of the word rapids.

Mr. Rankin: He says he doesn't understand what rapids.

Interpreter: No, he doesn't understand what rapid means.

Mr. Rankin: You are right. I am wrong, Judge.

Q. Do you understand what swift water means? Do you understand swift water?

A. Yes, I understand swift water.

Q. Where it flows fast. Well, now, above Big Eddy there is a narrow place where the water flows fast, isn't there?

A. I guess you mean Tenino where water runs swift?

Q. Yes.

242 A. From Big Eddy you mean to Tenino?

Q. Well, do you know where the Indian village of Wish-ham, was on the Washington side? Was there any Indian village on the Washington side in those days?

A. Yes, sir.

Q. What was that called?

A. Wish-ham.

Q. All right. Now, where was Tenino with reference to that village—was it above or below that village?

A. Well, Tenino just on Oregon side, this side.

Q. I know; but is it farther up the river or farther down the river than that Indian village?

A. That Wish-ham village?

Q. Yes.

A. Right straight across, this way.

Q. Right straight across on this side?

A. On this side, yes.

Q. Then your father's fishing place went from this point that the white people called Lone Pine you said, or Lone Tree, up to opposite this Indian village?

A. Yes; from Wah-sucks up to Tenino.

Q. Yes. And Tenino and Wah-sucks are both on the Oregon side?

A. Yes, sir.

Q. How many fishing places were there between those two points?

A. Tenino and Wah-sucks, you mean?

Q. Yes. How many fishing places between them?

A. I don't remember. There is lots of fishing places. I can't remember. A good many of them.

Q. On the Oregon side?

A. On the Oregon side, yes.

Q. Seven or eight? Was there seven or eight good fishing places along there?

A. Yes. Maybe a little more.

243 Q. Maybe more than that?

A. Yes, sir.

Q. Nine or ten?

A. Yes, sir.

Q. Were they just as good places as Tenino?

A. Oh, some places not very good; when water is high, not very good.

Q. But were they just as good fishing places as this one down the river that you have testified about?

A. Yes, sir.

Q. Now, Coke Cherry Point—Do you know where Choke Cherry Point was?

A. Yes, sir.

Q. Was Choke Cherry Point a good fishing place?

A. That is only one place. I have seen the old man always fish there, Choke Cherry there.

Q. Some old men?

A. Old man. One old man—he is dead, long time he died—that is his place, fishing place there.

Q. What was his name?

A. Kuna-shiack.

Q. Was he the Indian that the white men used to call Doctor Jim? Did the white men call him Doctor Jim?

A. I don't know what they call him; that I called Kuma-shiack.

Q. Yes. Did the white people call that Indian Doctor Jim? Is that his white name?

A. I don't know. I don't know his white name then. That is all I know, his Indian name, Kuma-Shiack.

Q. His fishing place was how far above Mr. Seufert's cannery?

A. Oh, about—let's see—about pretty near half a mile I guess.

Q. And that was at Choke Cherry Point, was it?

A. Yes.

Q. That was a good fishing place, was it?

A. That is the only one place; he fished there, that old man; he used to fish.

Q. That was his fishing place?

A. Yes, sir.

Q. Does each Indian have a fishing place?

A. What Indians?

244 Q. Does each Indian have a fishing place?

A. Oh, yes, each one. When old man died then his son fished there.

Q. His son takes the place?

A. Takes the place, yes.

Q. Now, after you went out to the Reservation to live, how long was it before you came back?

A. Well, after I went up to Reservation first time, the Indian Agent gave them chance to come down and fish every fishing time, when I was young.

Q. Well, did you come every time, or only once in a while?

A. Every time when I was young boy, every time I come fishing time.

Q. Did you fish?

A. Yes, sir; I fished.

Q. Where was your fishing place?

A. Away up; up Tenino, little village, Wasco. Big Eddy where they call it this time.

Q. Big Eddy.

A. Yes. That place that called Wasco; right there; where Big Eddy is.

Q. How far was that above Mr. Seufert's cannery?

A. Well, by guess, I guess two miles, by guess.

Q. Up at the upper end of the Big Eddy?

A. Yes.

Q. Where the swift water came out into the Big Eddy?

A. Yes.

Q. Did you always fish at that place?

A. I always fish, yes, all along anywhere where the fish runs; fishing place. I fished there when I became strong enough to fish.

Q. I say, was that always your place, that you claimed as your place, where the swift water came into the Big Eddy?

A. Yes, I always fished there.

Q. And how long before you went to the Reserve did your father and mother die?

A. Well, when my father and mother died, why, on that time my sister—half-sister—took me up at Warm Spring there, when I was a boy about ten or twelve years old.

Q. Right away after your father and mother died?

A. Yes, sir.

Q. Or did you live down here a while first?

A. No. Right away. They took me because it is all the Indians move to Warm Springs.

Q. Which died first, your father or your mother?

A. My father died first.

Q. How long before your mother died?

A. Oh, about three or four years then after, my mother died. My father died before. About four years my mother died after.

Q. Then you were only six or seven years old when your father died?

A. What do you say?

Q. You were about six or seven or eight years old when your father died?

A. Yes.

Q. Now, how many Wasco Indians had a fishing place down at this lower place. I can't remember the name you call it. What do you call that place down there, the lower place?

A. Wah-sucks.

Q. Wah-sucks?

A. Yes.

Q. Now, how many Wascos had a fishing place down there?

A. Not very many fishing places at Wah-sucks there. I guess about four; three or four places where they used to catch salmon; there is best places.

Q. There was about three or four places where they used to fish?

A. Yes.

Q. How many Wascos used to fish there?

A. Oh, a good many.

Q. About how many?

A. Oh, about, sometime less than fifty, sometime more than; when lots of salmon came, then lots of Indians came up there.

Q. Yes. And there would be about fifty Wasco Indians fishing there, would there?

A. Oh, yes, sometime; yes, they fished that many, sometime yes.

Q. Then you claim that besides that the Yakima Indians would come across there and fish?

246 A. Yes, sir.

Q. That was because they were intermarried, was it?

A. Yes, sometime by marriage; some Indian relations, you know.

Q. Yes, some Indian relations.

A. Yes.

Q. And when they would come over there, the Wascos would let them fish?

A. Yes, sir.

Q. Let them have their places for a while?

A. Yes, let them have their places.

Q. Now, did these Indians have horses in those days?

A. They had some horses, some of them; not very many.

Q. The Wasco Indians had horses, did they?

A. Yes, sir.

Q. And the Yakima Indians had a great many horses, hadn't they?

A. Yes, sir.

Q. Now, would they bring their horses across the river?

A. No, not very often. Sometime, when anybody, Wasco Indians bought from them, from Yakima, then they will bring across the horse—swim.

Q. They would swim them across?

A. Yes.

Q. When the Yakimas would come over to visit the Wascos and fish there, would they bring their horses?

A. No, sir, they didn't bring them across; they left across the creek—river, yes.

Q. Across the river?

A. Yes.

Q. On their own side?

A. On their own side, yes.

Q. Now, whereabouts on this side of the river would these Indians land with their canoes?

A. What Indians do you mean.

Q. The Indians that came across the river.

A. They had the canoes.

Q. Yes.

A. What Indians you mean they had the canoes?

247 Q. Yes. The Indians that had the canoes and come across the river to Wah-sucks to fish—Where would they land?

A. Oh, they used to live — The Dalles there; they owned land, used to be.

Q. What say? Where would they land their boats? Where would they pull their boats up on the shore? When they got over to the Oregon side, where would they put their boats?

A. Well, they tied there on the Oregon side. Some Indians they had canoes on that side, Washington side.

Q. Well, when they came across the river from the Washington side, whereabouts would they land their boats, with reference to this fishing place?

A. Well, they landed their boats up at Wah-sucks, a little above Wah-sucks they tied their canoes.

Q. Above Wah-sucks?

A. Yes.

Q. How far above Wah-sucks?

A. Well, about half a mile, I guess.

Q. Half a mile above Wah-sucks?

A. Yes. They called the place Til-mich-tich.

Court: What is that name?

Interpreter: Til-mich-tich. Eddy.

Mr. Rankin: It means eddy in English?

Interpreter: Yes.

Mr. Rankin: The Judge wants the name.

Interpreter: Til-mich-tich.

Q. Is it a creek or eddy where they would land the boats?

A. Yes, it is eddy.

Q. Is there a creek comes in there? Is there a creek empties into the river there?

A. That is Three Mile Creek, but it is dry; there is no water right there.

Q. Where Three Mile Creek comes in?

A. Yes, just where Three Mile Creek comes, the mouth of Three Mile Creek, just a little above where that Til-mich-tich is.

248 Court: Is that where the cannery is, Three Mile Creek?

Mr. Rankin: The cannery is Five Mile, I believe.

Q. Do you know that creek there, that comes in there by Mr. Seufert's cannery?

A. Yes.

Q. White men call that Five Mile Creek, don't they?

A. Yes.

Q. How far was this place, where you claim the Indians used to land, below that creek there by Mr. Seufert's cannery?

A. What?

Court: He does not understand very plain.

Mr. Bennett: All right, I will try to make it a little plainer, then.

Q. How far below Mr. Seufert's cannery was this place where the Indians used to land their boats?

A. Well, from Mr. Seufert's cannery, it is—oh, about a quarter of a mile below.

Q. About a quarter of a mile below Seufert's cannery, and about half a mile above the fishing point?

A. Yes, sir.

Q. Now, where did the Indians land their boats on the Washington side?

A. Some owned canoes they landed on Washington side; some of them their own canoes.

Q. Whereabouts on the Washington side—right opposite this fishing point, or above it or below it?

A. I don't know on that side where they landed their boats. On the Washington side I don't know where they landed. But I heard the old people they had some canoes, but I don't know where they landed their canoes. Only on this side I know.

Adjourned until 10 A. M.

249 PORTLAND, OREGON, January 22, 1916.—10:00 a. m.

TOMAR HANDLEY resumes the stand.

Cross-examination continued:

Q. Now, Mr. Handley, you say that the reason the Indians have not been fishing at this point in late years is because Mr. Seufert has

fenced up the land. When did Mr. Seufert fence around that point—Lone Pine Point, or Pine Tree point? When did Mr. Seufert put a fence around that—what year?

A. What point do you mean?

Q. The point that you call Wah-sucks, or Lone Tree point. When did Mr. Seufert put a fence around that?

A. I stated yesterday I never come down very often, but I don't know when, what year, he fenced the Seufert.

Q. Well, about what year did you first see a fence there?

A. Oh, about twenty years ago.

Q. You claim that Mr. Seufert had a fence around that point about twenty years ago?

A. Yes, sir.

Q. Now, did you go into that point after the fence was there?

A. I never come very often, but every other year or else every two years, when I need some salmon, to get down to fishery.

Q. Now, how did you get in there after the fence was built?

A. Well, some of my relations was stayed inside that fence, Wasco people.

Q. Well, how did you get in there? How did you get through the fence?

A. Well, I got through only by the gate. Only one gate was open.

Q. Then there was a gate in the fence so the Indians could go through, back and forth, if they wanted to, was there?

A. Yes, sir, in that gate.

Q. Was that a big gate for a wagon—so that a wagon could go through?

250 A. Yes, sir.

Q. Now, was that fence that you saw there at that time on each side of the railroad track?

A. Yes, inside the railroad track.

Q. And was there a fence on both sides of the railroad track?

A. Yes, sir.

Q. Then you had to go through two fences to get in there?

A. Yes, sir.

Q. Two gates?

A. Two gates, yes, sir.

Q. Now, that was the first fence that was put around that point, was it—that double fence on each side of the railroad track?

A. Yes, sir.

Q. And there was no fence there until that fence was put along the railroad track?

A. No, sir.

Q. And you think that was about twenty years ago?

A. I think just by guess, yes.

Q. Yes?

A. By guess.

Q. And there were gates left in both of the fences so that you could go there from the road right through?

A. Yes.

Q. All you had to do was to open the gate?

A. Yes, right there.

Q. And go across the railroad track?

A. Yes; go across the railroad track through one gate by his orchard there.

Q. Now, after that fence was built, Mr. Seufert let the Indians pasture their horses in there, didn't he?

251 A. Yes; those horses they have been using; they go on the wagon there.

Q. And the Indians sometimes used to go in there and camp just inside of those fences, and turn their horses in there?

A. I don't know about some of the Indians, you know; but I know by myself.

Q. That is the way you did—you used to go in and camp?

A. That is the way I did. I go through that gate where Peter Bruno is, my friend, and live in my camp there; held my horses there, feed my own hay right in there.

Q. Would that be when you were on the way down to Hood River?

A. I never was down to Hood River.

Q. You never were down to Hood River?

A. No. I come from Warm Spring.

Q. Now, you say that you saw Sam Williams fishing in the river with a net in 1906 and 1907?

A. Yes, the first time I saw him.

Q. Now, what kind of a net did he have, a dip net or a long net?

A. Dip net?

Q. A dip net?

A. Yes.

Q. You claim you saw him fishing off the rocks with a dip net?

A. Yes, sir.

Q. Now, you say you had known Sam Williams about 20 years?

A. 20 years, or 19, my guess; yes. 20 years or 19.

Q. Was he fishing with a dip net when you first knew him?

A. Yes, sir. When I first seen him, that was 1906 or 1907.

Q. I know. But did you see him fishing with a dip net twenty years ago, when you first saw him, when you first knew him?

A. No, sir, I never seen him when I first seen him—he was never fishing that time. But when I came down in 1906, that time, I saw Sam Williams was fishing with a dip net; but the other years I just saw him when he first came.

252 Q. Now, whereabouts do you claim to have seen Sam Williams fishing with a dip net in 1906 and 1907?

A. Right down, right on the river there, at Wah-sucks, at that point.

Q. Right at the point?

A. Yes, sir.

Q. How many times do you claim to have seen him fishing with a dip net there?

A. How many times?

Q. Yes.

A. Well, the time, that time when I come down that time, I saw

him, I stated, the first time; I never come very often; every once a year, or else every other year, when I come down.

Q. Well, how many times, about, did you see him fishing with a dip net at these different times when you came down? How many times did you come down there and see him fishing with a dip net? Once or twice or ten times?

A. Oh, I saw him—I stayed camping in that Wah-sucks, and I saw him for three days, or four days, when I camped there, I saw Sam Williams that time.

Q. Three or four different times?

Court: Three or four days.

Mr. Bennett: I want to know whether three or four different times, or all at one time.

Q. Three or four different trips that you made down. Was it all one trip, or did you see him there more than one year?

A. Yes. One trip, one year I come down, yes.

Q. You never saw him there but one year with a dipnet?

A. Yes, sir.

Q. Now, when was it that you claim to have seen 50 Wasco Indians fishing there?

A. That time there was no fence.

Q. Well, when was it—how many years ago?

A. Oh, about 40 I guess, little over 40 years ago.

253 Q. Now, was that the last time that you saw a bunch of Indians fishing there, 40 years ago?

A. That is the last time I saw them. I never come down very often any more. Then I always stay at Agency, farming.

Q. And that is the last time that you saw quite a bunch of Indians fishing there?

A. Yes, sir.

Q. Now, do you know where Mr. Gulick's place is there?

A. Yes, sir.

Q. Now, when you saw Sam Williams fishing there in 1910 and 1911, was he fishing there by Mr. Gulick's place?

A. Just right—no, not right in Gulick's place, but right down that point there, right straight point.

Q. Right what?

A. Right straight to the river.

Q. From Gulick's place?

A. Yes.

Q. Do you know where Mr. Gulick's fish wheel is?

A. Yes, sir.

Q. How far was Sam Williams fishing from Mr. Gulick's fish wheel?

A. I don't know how far out that river is.

Q. Well, how far was it from Mr. Gulick's wheel to where Sam Williams was fishing, as near as you can remember?

A. Well, just by guess, about a quarter of a mile down below there.

Q. Was it in the same slough—was it in the same water that Gulick's wheel was?

A. What water you mean?

Q. Well, isn't Mr. Gulick's wheel in a kind of slough or low place back on the rocks there—kind of a bay or slough that runs back into the rocks—Isn't that where Mr. Gulick's wheel was?

A. No. Mr. Gulick's wheel is away this way, but Sam Williams' fishery down to where that river is.

Q. Well, isn't there a high water channel that runs through there, back of this Wah-sucks point? Isn't there a high water
254 place where the high water runs through there when it gets up, makes that an island?

A. O don't understand what that means

Q. You don't understand what that means?

A. No, sir.

Q. Well, don't the water, at high water, run between the railroad track and this point you call Wah-sucks? Doesn't the water run through between this point and the railroad track when the water is high?

A. I do not understand what you mean.

Court: I don't think he understands you.

Mr. Bennett: Maybe he don't, your Honor.

Q. Do you know what high water means?

A. Yes, sir.

Q. You know what high water?

A. Yes, sir.

Q. Well, you know when the Columbia River gets high, along in May and June, don't you?

A. Yes, sir.

Q. Well, now, when the water gets high along there, isn't there, along in May or June, isn't there a place back of this point that you call Wah-sucks, between that point and the railroad track, where the water runs through there when the river gets high?

A. Yes, when the river gets high then the water runs to this side of Gulick's house.

Q. Yes.

A. Yes, sir.

Q. Now, wasn't Mr. Gulick's wheel in that place where the water runs through when it is high?

A. You mean by the railroad track?

Q. Well, one of those. There are two places there where the water runs through when it is high, isn't there? Two different places where the water runs through when it is high?

A. I don't understand what you mean.

Q. Well, you say there is one place where the water runs through there when it is high? You understand that?

255 A. Yes, one place on this side of Gulick's place.

Q. Well, then when the water gets a little high, isn't there another place too?

Court: I think that has been proven sufficiently by the engineer without going over that again.

Mr. Bennett: I hate to take up the time, your Honor, but I have to find out to get a basis to ask my question as to where Gulick's wheel was; that is the reason.

Court: He said this was about a quarter of a mile from Gulick's wheel, didn't he?

Mr. Bennett: What say?

Court: I say he said the point where Williams was fishing was about a quarter of a mile from Gulick's wheel. Doesn't that fix it close enough?

Mr. Rankin: I think it would save time if you would ask your preliminary question through the Interpreter, and then ask your direct question.

Court: I think it would confuse him to change.

A. Well, you make a change. We appointed this man to interpret, because he is an honest man; he interprets for the church too. We appointed him. So we bring this one. But I do not understand some. I might not answer right, you see.

Q. Maybe I misunderstood you a while ago, Mr. Handley. How far was it from Mr. Gulick's wheel to where Mr. Williams, Sam Williams, was fishing in 1910 and 1911? How far was it from Gulick's wheel to where Sam Williams was fishing in 1910 and 1911?

A. Did not I state it quarter of a mile where that Gulick's wheel is? Did I not state it this first time?

Q. I didn't understand you. The Judge understood you, but I didn't. I am a little dull of hearing and sometimes I don't catch everything.

A. I am just the same, me, too.

Q. Yes.

A. It is because I am not well educated man. I have never gone to school.

256 Q. You went to school, didn't you?

A. No.

Q. Didn't you go to school on the Reserve?

A. No—only I go to school a little while. You see, I learn the first reader, that is all. That is all my education.

Q. The first reader?

A. Yes.

Q. I see.

A. If you go to school and learn first reader, can you read a newspaper right away? No.

Q. I see. You seem to be able to explain yourself pretty well, though.

That is all.

Redirect examination:

Mr. Rankin: I will dispense with the Interpreter like you. You talk to me in English, Mr. Handley.

Q. You told Judge Bennett that your father fished from Tenino down to Wah-sucks?

A. Yes, sir.

Q. Could he have fished other places, too?

A. You mean that the other side of the river, Washington side?

Q. Yes.

A. Yes, sir.

Q. Could he have fished up the river from Tenino?

A. Yes, sir, up the river.

Q. Why did he just fish from Wah-sucks to Tenino? Why he just fish in that place?

A. What is that "why" mean?

Q. Why did he just fish between Wah-sucks and Tenino, or did he fish somewhere else?

A. I don't know what "why."

Q. Was there any fishing place down the river from Wah-sucks?

A. No, sir.

Q. Was any fishing place above—up the river from Tenino?

A. Yes, sir.

Q. Did your father fish on the river above Tenino?

A. Above Tenino?

257 Q. Yes, up river from Tenino.

A. Yes, sometimes he go up above; but not in low water, but where it is swift water.

Q. You told Judge Bennett, if I remember, that your father did not fish above Tenino.

A. Well, you mean Tenino?

Q. Yes, Tenino.

A. Yes, Tenino; right below from Wah-sucks to Tenino, my father's place to fish. That is where he always fished.

Q. Did he fish above Tenino up river?

A. No, he never go clear to Celilo to fish; but from Wah-sucks to Tenino and Wish-ham.

Court: Wish-ham on the other side of the river?

A. Yes, on the other side of the river.

Q. You call one crossing Til-mich-tich, something like that.

A. Til-mich-tich, yes.

Q. You understand me?

A. Yes, sir.

Q. Well, was Til-mich-tich—

A. Til-mich-tich a little below Seufert's cannery.

Q. What is the English name for Til-mich-tich?

A. I don't know what the English name of Til-mich-tich.

Court: Ask him.

Q. Ask him what the English name for Til-mich-tich is, Charley, American name.

Interpreter: It is an eddy.

Q. Ask him does it mean what we know as Big Eddy up there, or just a place in the water.

A. (Through Interpreter:) Yes, it is the eddy that catches all the

drift that comes in and it lodges against the bank. That is what the Til-mich-tich means, the drift lodging against the bank.

258 Q. Now ask him if he knows the place on the river that the whites call Big Eddy?

A. Yes.

Q. Is that the same as Til-mich-tich?

A. No.

Q. Is Til-mich-tich what the whites call Covington Point?

A. I don't know, white men.

Q. (Direct to witness:) You say you went to Warm Springs when you were ten years old?

A. Ten or twelve.

Q. Ten or twelve?

A. Yes.

Q. Did you know anything about the fishing places after you went to Warm Spring? After you went to the Reservation, did you know about the fishing places after that? I will ask that through the Interpreter. (Through Interpreter): He testified on his cross examination that he went to Warm Spring when he was ten or twelve years old. Ask him if he then knew about the fishing places on the river after he had gone to Warm Spring?

A. Yes.

Q. At the time he saw fifty Warm Spring Indians there, were there any Yakima Indians with them or not?

Mr. Bennett: He has already gone over that your Honor.

Mr. Rankin: He didn't say anything about whether there were Yakima Indians.

Mr. Bennett: He said there were three.

Mr. Rankin: All right, if it is understood he said there were three, that is all. I didn't understand him.

Q. How long would they fish there?

Interpreter: At Warm Springs?

Q. No. Both of the tribes, how long would they fish at Wah-sucks?

A. As long as any salmon to be caught.

Mr. Rankin: I want to talk with him in English again.

Q. (Direct to witness:) Do you understand what I mean when I say I give you permission to do something?

259 A. Yes.

Q. What does permission mean?

Court: It is a pretty hard question for a man who graduated from the first reader.

Mr. Rankin: I know, your Honor; but that was a question that was put to him on cross-examination yesterday. He was asked if the Warm Springs gave permission to the Yakimas to come there and fish. He said yes.

Mr. Bennett: I don't think the question was asked him that way.

Mr. Rankin: The word "permission" or "permit" was used. I

want to see if he understands what it means. I think I am entitled to it.

Q. You understand what a right to fish is?

A. Yes, sir.

Q. What does that mean—what does right mean?

A. Well, to let anybody have.

Q. What does permission mean, then?

A. To ask, permit, to let anybody have.

Court: I think he understands it. He might be unable to define it.

Mr. Rankin: Very well.

Mr. Bennett: An Englishman might find it hard to define these words.

Mr. Rankin: All right.

Q. Did the Yakimas fish at Wah-sucks by permission of the Wascos, or by their right?

A. Both by permission and by right.

Q. Both by permission and right?

A. Yes.

Q. Tell about it, how you mean. Just tell the Court about it.

Court: Did the Wascos go there to fish whenever they wanted to?

A. Yes.

Court: Did the Yakimas go there to fish whenever they wanted to?

260 A. Yes.

Court: One had as much right there as the other?

A. Yes.

Court: And each one was willing that the other should fish whenever he wanted to?

A. Yes, sir.

Court: I think that answers the question.

Q. I think you mentioned Peter Jackson yesterday in your testimony?

Mr. Bennett: I don't think he did.

Mr. Rankin: Didn't he?

Mr. Bennett: I don't think so.

A. No, I did not mention him.

Mr. Rankin: All right. I thought he did.

Q. About that fence. Do you know who put up a fence twenty years ago, about that?

A. Yes, sir.

Q. Who?

A. Seuferts.

Q. You know that?

A. Yes, sir. I never seen, but Indians said this.

Q. Oh, Indians say?

A. Yes, Indians say.

Q. Did Mr. Seufert ever tell you whether you could fish there or not?

A. How is that?

Q. Did Mr. Seufert ever say whether you could fish or not there?

A. I never asked him. When I come down I never asked him to fish. I just come down to buy some fish every other year.

Q. To buy fish?

A. I buy fish.

Q. Why didn't you go and catch your own fish?

A. Well, no time; because some Indians been fishing, so I come down and buy them and go off again.

Q. Buy from them?

A. Yes.

Q. Do Indians fish there now like they used to when you saw many Indians there?

A. Oh, a few. Those that have been working for Seufert; only those people.

261 Q. Only those people?

A. Yes.

Q. Because why, the others do not fish there?

Mr. Bennett: That has all been gone into, if your Honor please.

A. Well, it is because—I heard this from the Indians—Seufert don't let them have the fishing place.

Mr. Bennett: Does he say he got that from the Indians?

Mr. Rankin: Yes.

Mr. Bennett: I object. He hasn't any more right to tell that than a white witness.

Court: I think you can get that from other witnesses who are more familiar with the place than this man; and they can tell it with greater facility. I think you better take that course.

Mr. Rankin: I want to suggest this point. Strictly speaking, it is in one sense hearsay for these Indians to state that they did not go there to fish because their friends or people have told them Seufert does not allow them to go there. In another sense, that is something like general reputation in the community; and these Indians, if they had understood, that was the general understanding, would not go there personally to be refused, but would act on what has become notorious among their people. I will adopt your Honor's suggestion as to the rest of it.

Recross-examination:

Q. One question: Mr. Handley, did you know Mrs. Covington when she used to live there between Wah-sucks and Seufert's cannery?

A. No, sir.

Q. Did you know that there was somebody lived there by the name of Covington?

A. No, sir.

Q. Well, did you know there was anybody lived in there at all?

A. Only when I come down, only I seen some Indians was living there, a few Indians there, and Gulick.

262 Q. Yes, I know; but wasn't there a white woman that had an orchard in there—wasn't there a white woman that had a big orchard in there between Wah-sucks and Seufert's cannery?

A. No, sir.

Q. For many years?

A. I don't know. I never asked those people "Who else living here?" I just come down and camped one or two days, then go off again.

Q. Well, there was a white man's house in there between Seufert's cannery and Wah-sucks for many years?

A. Only I seen some Japanese, I guess, I thought it was some Japanese; I seen some living there.

Q. Some Japanese there?

A. Yes, sir.

Q. Well, wasn't there a white woman that lived there and had a big orchard in there? An old lady? White lady?

A. I don't know. I never go in that house.

Q. Well, now, this point—what do you call this point where you say the boat used to land, about a quarter of a mile below Seufert's cannery?

A. Til-mich-tich.

Q. Well, now, was there an orchard right up on the shore above that point?

A. Yes, by railroad track there, there is an orchard.

Q. Yes, right opposite that point where this Indian name that you give?

A. Yes.

Q. About a quarter of a mile below Seufert's cannery, wasn't there a white man's house right up there?

A. Well, yes, one house there, but I don't know whose house it is.

Q. It was a good, big house, wasn't it? White man's house, wasn't it?

A. Yes; but only Japanese I have seen there.

Q. But you think Japanese is all you saw there?

A. Yes.

Excused.

263 PIPESHIRE, a witness called on behalf of the Government, being first duly sworn, testified as follows (through Charley Pitt, Interpreter):

Direct examination.

Questions by Mr. Rankin:

— Do you speak any English?

A. No.

Q. I think that is true. That is my information, that he does not. What is your name?

A. Pipeshire.

Q. Where do you live?

A. Warm Springs.

Q. How long have you lived there?

A. I have lived at the Warm Springs ever since that we were taken out by the Government, out there. I have lived ever since there.

What tribe do you belong to?

A. I am a Warm Spring tribe.

Q. Warm Spring tribe?

A. Warm Spring tribe.

Q. About how old are you?

A. Something like 87.

Q. Where were you born?

A. On the Deschutes.

Q. Have you ever fished?

A. Yes, when I was younger.

Mr. Bennett: What is that?

A. When I was a young man.

Q. What was the fishing place called where you used to fish?

A. At Three Mile.

Q. What was the Indian name for that place?

A. He says, excuse me; I don't know anything about the Wasco terms of naming that point. I don't know the Wasco language. I don't know what they called it.

Q. Well, what did he call it, if he said he was going to fish?

A. In my tongue, the Warm Spring term, I call it Wich-ut.

Q. Wich-ut?

A. Yes, in my language.

Q. Where was Wich-ut?

264 A. It is the mouth of that small stream above the City of The Dalles; above the mouth of the little stream there, that is Wich-ut.

Q. What stream is that?

A. It is the stream next to the city of The Dalles on the east, under and near the city.

Q. Whereabouts from Seufert's cannery is that stream? First ask him if he knows where Seufert's cannery is.

A. Yes, I know where it is.

Q. Whereabouts from Seufert's cannery is this fishing place?

A. It is down the river.

Q. How far?

A. I hardly know, he says. It may be half a mile or more. I don't know; but it is below.

Q. What Indians fished there?

A. Oh, he says, lots of Indians used to go there.

Q. Indians from what tribes fished there?

A. He says, the Tygh Indians and the Wasco Indians and Wish-ham Indians and Teninos and Celilos, and other Indians came in.

Court: Ask him if the Yakima Indians fished there.

Q. Did the Yakima Indians fish there?

A. Didn't I mention Yakima name? I meant it, to say Yakimas.

Q. When did you first see Indians fishing there?

A. Well, he says, I can't recollect; but all I know, when I was a young man I seen Indians there fishing.

Q. When did you last see Indians fishing there?

A. He says, the last time I seen them fish there, just a little before we were taken out to the Reservation—a little before.

Q. Ask him if he knows about what year that was?

Court: I suppose that is fixed by other data, isn't it?

Mr. Rankin: It can be very readily, your Honor.

Court: I think that would be better than to take up the time of the court fixing those things that are fixed by other data, by an Indian whose language has to be interpreted.

265 Mr. Rankin: I will fix it by record.

Mr. Bennett: For this particular Indian?

Mr. Rankin: Oh, I think they were all taken out there about the same time.

Q. Were you taken out to Warm Springs at the same time all the other Indians were taken out there, or at a different time?

A. I was taken out with all the Indians and in the same spring.

Mr. Rankin: There was a general movement.

Q. Have you been back to the fishing places on the river since you were taken out to Warm Springs?

A. He says, I have been coming in and out different times at The Dalles to fish.

Q. How often would he come in and out?

A. Four times.

Q. During the time that he lived there and saw Indians fishing at Three Mile, with what regularity—do you understand regularity, Charley?

Interpreter: Yes.

Q. With what regularity did the Indians fish there?

A. Oh, he says, our forefathers always fished there and allowed other tribes to fish with them; and that was an old custom of the olden times.

Q. Did his tribe recognize the right of the Yakimas to come there and fish just the same as them—that they could go there and fish?

Mr. Bennett: That is more leading than is necessary, it seems to me.

Mr. Rankin: I don't know how we are going to get at these things, Judge, without leading the witnesses somewhat. It will take a great deal of time unless we put the question directly.

Mr. Bennett: I think that is taking a vital question and putting it into his mouth.

266 Court: These Indians are unsophisticated. I don't think that they are going to tell an untruth. They are going to tell about what they think about this thing and what they remember; and I don't think the leading questions are going

to make much difference with that kind of witness, and therefore I will permit the question. I want to get through this case some time. We have been now nearly a whole day with one witness.

Q. (Question read.)

A. Yes, just like one tribe; they were recognized like their own tribe.

Court: Mr. Rankin, where you can avoid leading questions, do so; but if you cannot get your point without asking a leading question the court will permit it. I want to get through with it.

Q. You testified Yakimas fished there. How did they get there?

A. Crossed in canoes.

Q. Where?

A. At a certain point at the mouth of a certain creek there used to be a place where they used to cross with canoes.

Q. What kind of canoes?

A. The canoes were made out of trees; dry trees dug out and burned out sometime—any way to get the inside of the log out to make the canoe.

Q. Where did they land on the Oregon side of the Columbia river? I want the name of the place.

A. He says, wherever the landing point was, there they would land.

Q. Did he know the name of the landing point?

A. He says they only had certain places to cross, and wherever they crossed on the other side they had a place to tie the canoe. Or coming across this way, they had a place to tie the canoe.

Q. What did they do with the fish they caught?

A. They dried it and prepared it for winter use?

Q. What seasons of the year, times of the year, did they fish there?

A. The Indian has careful watch when the salmon run, and whenever the salmon would begin to run, they would begin to fish.

Q. Has he ever fished at Three Mile himself?

A. I did when I was young.

267 Q. Have you fished at any other places?

A. I have fished at Celilo too when I was young.

Q. What were the relations of the tribes that met there, as to whether or not they would dispute or have trouble among themselves?

A. Never was any disputes. They were married back and forth.

Q. What tribes were married back and forth?

A. The Indians married over to the Wash-ham and the Yakima, and the Yakimas married over to the Wascos and Celilos, and they just married in from different tribes up and down the river.

Q. Where was the territory that the Tygh tribe resided in? What lands did they reside in?

A. On the Deschutes, at what is known today as Sherar's Bridge.

Q. Sherar's Bridge?

A. Yes, on the Deschutes. That is where they lived, these Tygh Indians.

Q. Do the Indians fish at Three Mile now as they used to?

A. No. No, they don't fish like they used to.

Q. Why?

A. Because we have been told by the former agents that the fishery is owned by a certain individual and he has fenced it, and you keep away.

Q. What agent told him that?

A. Mr. Kirk is one.

Q. Were there others too?

A. Mr. Wheeler, Jason Wheeler.

Q. Do the tribes from the north side of the Columbia river fish there as they used to?

A. Oh, no. No, not like they used to.

Q. Tell why, if you know.

A. The Indians from the other side didn't fish there, didn't go over to fish on the same account that we didn't go down to fish—because it was owned and fenced by certain parties.

Q. Who were those parties?

A. Seufert; the man that owned the fishing business.

Q. Ask him if he can remember any treaties that were made.

A. I was present. I was a party.

268 Q. At what treaty? What treaty was it he remembers?

A. Palmer.

Q. Palmer treaty?

A. Yes, Palmer treaty.

Q. Did he know the fishing place before the Palmer treaty?

A. Oh, yes; away back.

Q. Talk loud so the Judge can hear.

A. He says, these fishing points were known long before the whites ever was any treaty.

Q. I am asking his personal knowledge.

A. Yes, I know that to be so.

Q. How old was he at that time?

Interpreter: At what time?

A. At the time of the treaty, if he knows.

A. He says he was a full-grown young man.

Q. What does he mean by full-grown young man?

A. Well, he says he must have been twenty or more.

Q. Ask him if that was the Huntington treaty or the Warm Spring, or the Palmer treaty, when he was a young man.

A. No, no. This was the Palmer treaty. That was the first treaty; but Huntington came away later.

Q. What can he say of Three Mile as a fishing place in comparison with other places at The Dalles fishery—meaning by The Dalles fishery the whole river there.

A. He says, that I understand that this fishing point that we have been talking about was the earliest place to fish, on account of the river having a bend and that filled up first.

Mr. Bennett: On account of what?

A. On account of the river has a kind of a bend there, and the river ran up first, got higher and fitted the fishing place. That was the earliest fishing points.

Q. Was it a good fishing point? I mean by good were there many salmon there?

A. Yes, it was good.

269 Q. Did all the Indians go there at that time for early fishing or not? State whether or not they did.

A. Yes, sir; they all went there at the time to fish.

Cross-examination.

Questions by Mr. Bennett:

— Ask him what the name of his tribe was at the time that the Palmer treaty was made—what they called themselves.

A. He calls himself a Tygh Indian.

Q. Tygh Indian?

A. Yes, Tygh.

Court: Are the Tyghs a part of the Wasco tribe, or are they a distinct tribe?

A. They are a different tribe.

Mr. Bennett: According to the treaty, your Honor, they were a branch of the Walla Wallas, and the Wascos are an entirely different race.

Q. Now, how many tribes joined in the Palmer treaty?

A. He says, there were what the Indians is called now Hood Rivers; their name *were* Dog Rivers at that time; then the Wasco tribe; then the Tenino tribe; then the Celilo tribe; then the Tygh tribe; then the John Day tribe. There was six tribes.

Q. Ask him if there wasn't a tribe called the Upper Deschutes tribe.

A. We are the people; we are the Upper Deschutes. That is on the Tygh, yes.

Q. Now, ask him if the Tenino tribe and the Celilo tribe were not known at that time as the Lower Deschutes Indians.

A. Yes, you are right.

Q. Then ask him if the country of the Wascos and the Lower Deschutes didn't extend along the south side of the Columbia river, from The Dalles to the Deschutes river; from The Dalles to the mouth of the Deschutes river. Ask him if these two tribes, if their country, the Wasco Indians and the Lower Deschutes Indians, 270 didn't extend from The Dalles to the mouth of the Deschutes river.

A. Yes, they lived at that portion of territory.

Q. Now, ask him where the Palmer treaty was made.

A. Over on a small stream there near, south of The Dalles City today. Over the hills on a certain stream called Three Mile on the south side of The Dalles today.

Q. Ask him if it was about three miles from The Dalles.

A. Something that way.

Q. Ask him if he was present at that treaty.

A. I was.

Court: I think he said so awhile ago.

Mr. Rankin: Yes, he has, Your Honor.

Mr. Bennett: Maybe he did. I didn't understand him. I can never be sure about just what a witness testifies to, because sometimes my hearing fools me. He says now that he was present, does he?

A. Yes.

Q. Ask him how many Indians were present at that time.

A. I can't give you the exact numbers of Indians; but all I know there were six tribes and six chiefs.

Mr. Bennett: Well, I don't think I will pursue that. I don't know as it makes very much difference anyway.

Court: Is that a fact, that there were six tribes, historically?

Mr. Bennett: The Hood Rivers, the Wascos, the Lower Deschutes, the Upper Deschutes, and Tyghs, and the John Days. Yes, your Honor, I think that is right.

Court: Very well.

Q. Now, ask him if he knows the creek that runs in right by Seufert's cannery.

A. He says, Yes, it is a little stream called the Three Mile, mouth of Three Mile, down there close to Mr. Seufert's cannery. I was there this Fall.

271 Q. What say?

A. He says, I was down there this fall, at the place.

Q. Well, ask him if that creek is just above Seufert's cannery; if it comes in just above Seufert's cannery.

A. He says, the creek runs below Mr. Seufert's cannery, he thinks. There is bridges there. He says, I can't really swear now.

Q. What say?

A. He says, there is bridges there, one thing and another—I can't really describe where the creek—but I think the creek runs below the cannery.

Q. Ask him how far below the cannery

A. I can't tell you the exact distance, because I have looked upon the spot from a distance.

Q. How is that?

A. I have only looked over to the place from a distance, from quite a ways. I don't know exactly how far it could be, but the stream is below the cannery, I think.

Q. Ask him if it is very close to the cannery.

A. Not far; not very far.

Q. Ask him if it is between the cannery and Three Mile Point.

A. It is between.

Q. What say?

A. He says, the stream runs out into the river between Mr. Seufert's cannery and the fishing point.

Q. Ask him if it runs out closest to the point or closest to the cannery.

A. He doesn't know. He said, it seemed like it turns down the river a little bit. He don't know exactly which would be the closest.

Q. About half-way between the point and the cannery, ask him.

A. Yes, something like half-way between these two points you have mentioned.

A. Well, now, ask him if there is not a creek that comes in right above the cannery.

272 A. The cannery?

Q. Yes; right close to the cannery and above the cannery. Ask him if there is a creek comes in there.

A. Not that I remember of.

Q. Ask him if he knows Five Mile Creek.

A. Yes. Beg your pardon, he says, there is a creek there, Five Mile Creek.

Q. Oh, he says there is a creek there?

A. Yes.

Q. Ask him how far that comes in from Seufert's cannery.

A. How far does it come in?

Q. How far Five Mile Creek comes in from Seufert's cannery.

A. Now that part I have never walked over much, but the cannery is somewhere close by, where the mouth of that stream you have mentioned, Five Mile Creek. It is close there somewhere, but I have not been there.

Q. Ask him if it is about a mile from the cannery to the mouth of Five Mile Creek.

Mr. Rankin: Ask him first if he knows what a mile is.

Q. You can explain to him so he knows what a mile is. Ask him if it is about a mile from the cannery to the mouth of Five Mile Creek.

A. Oh, no. No, he said, not far.

Q. What say?

A. It is not far. It is not a mile.

Q. Ask him if he knows where the Big Eddy is.

A. Yes.

Q. Ask him if Five Mile Creek comes in above or below the Big Eddy.

A. Five Mile Creek comes out below this eddy.

Q. About how far below?

A. I don't know. It is something like half a mile, I think. I could not say positively.

Q. He says about half a mile?

A. Yes, maybe half a mile or less or more.

273 Q. Mr. Rankin: He says about half a mile; he can't say positively.

A. Yes. I can't say positively, but it is above.

Q. Now, ask him if there was any fishing places on the Oregon side about the Big Eddy.

A. I have never fished myself at the places which you have mentioned, but I have heard that there was a fishing point all along; but I have never fished there myself.

Q. Ask him if he ever saw any Indians fishing there.

Interpreter: He has, yes.

Q. No, but at the Big Eddy. Ask him if he ever saw any Indians fishing there.

A. Yes.

Q. At the Big Eddy?

Interpreter: No, no. Not at the Big Eddy.

Q. No, but at the Big Eddy. Ask him if he ever saw any Indians fishing at the Big Eddy on the Oregon side.

A. They did fish there by running out a platform away from the bluffs, and they fished out in the river.

Q. Well, ask him if he ever saw them fishing there; that is what I want.

A. Yes. That place I have seen them fish, yes.

Q. There at the Big Eddy?

A. Yes.

Q. Now, ask him if he ever saw them fishing on the Oregon side at Tenino.

A. I have.

Q. Ask him if he knows where Choke Cherry point is.

A. Yes, I know where that place is.

Q. Ask him how far that is from Seufert's cannery.

A. I could not tell you. It is above; it is further up the river from the cannery.

Q. Ask him if it is a good many miles further up the river.

274 A. Oh, no. It is not a good many miles, but it is quite a little piece up river.

Q. Well, about how many miles, ask him.

A. He says, it has been so long since I have been there, I have very near forgotten the distance. I have seen it, but it can't be more than a mile and a half or something that way.

Q. Ask him if he ever saw any Indians fishing at Tenino.

Interpreter: Tenino?

A. Yes, on the Oregon side.

A. Yes.

Q. Ask him if he ever fished at Tenino on the Oregon side.

A. I did when I was a young man, yes.

Q. When what?

A. When I was a young man; yes, I used to fish there too.

Q. Ask him if the mouth of Five Mile there by Seufert's cannery is the mouth of the creek where he says the boat used to land.

Interpreter: The boat or canoe?

Q. Canoe, I mean; yes, of course, canoes.

A. Yes.

Q. There by Seufert's cannery?

A. At the Big Eddy, there close by; at the Big Eddy.

Q. Ask him if they landed on the Oregon side there at the mouth of Five Mile Creek.

A. They did, yes.

Q. Ask him if there was still water across there from the Big Eddy to the mouth of Five Mile Creek.

A. It is rather smooth.

Q. Very smooth there?

A. Yes, rather smooth.

Mr. Rankin: He didn't say very smooth; rather smooth.

A. Rather smooth, yes.

Mr. Bennett: Well, that is what I mean.

Q. As him if that was clear above the first rapids above The Dalles. Above Dalles City?

275 Interpreter: This point?

Q. Yes, this point between the Big Eddy and the mouth of Five Mile Creek.

A. Yes, it was above.

Court: Ask him if he knows a point the Indians call Wah-sucks.

A. I do.

Court: Is that where they fished?

A. Yes, long ago.

Redirect examination:

Q. Ask him if he knows a place called Til-mich-tich.

A. Yes.

Q. Where is Til-mich-tich?

A. What in my language I call Wah-ki-nich, that in my language is called same thing in Wasco.

Q. What is it called in Wasco?

A. Til-mich-tich; and in Warm Spring it is called Wah-ki-nich.

Q. What is Wah-ki-nich?

A. Where the river goes round and round on the bank.

Q. What was Wah-ki-nich known for by him and his people?

Interpreter: What it were known for?

Q. Yes; what was unusual about it, or remarkable about it?

A. He says, I would have to take too much trouble to tell you. But, he says, this Wasco means a mountain sheep horn, a bowl, and at a certain spring under rim rock there was a rock that was cut out, something like this shape here (waste basket), and a stream run right into that. And they dipped the water from that, which was colder than any other water known. That was, they were named for that. That was in the form of this mountain sheep dish of Wasco. Now that is why they are called Wascos, by this rock.

Q. State whether or not you ever saw any canoes there.

A. I have, yes.

Q. Where were the canoes from?

276 A. From the mountains.

Q. On which side of the river?

A. I don't know which side of the river, but they were from the mountains.

Q. State whether or not the Indians could land at Til-mich-tich or Wasci-nich.

Mr. Bennett: I understand that means the name not of a particular place.

A. Yes, they did; they landed there.

Q. Where from, if he knows.

A. They come from the Washington side and land at this Til-

mich-tich. They come from the Washington side and landed at this Til-mich-ich.

Q. How does that place Til-mich-tich or Wasci-nich correspond with the place that he was telling Judge Bennett about, where they landed? Is it the same place or a different place?

Mr. Bennett: The mouth of Five Mile Creek.

A. It is the same place as this Wasci-nich, that I was telling the gentleman over there.

Q. He stated to Judge Bennett that that was Five Mile Creek. Ask him if he understands where Five Mile Creek is.

Court: He has already demonstrated that; because when Five Mile Creek was mentioned, he said that that was the creek by Mr. Seufert's cannery. I think he understands that. He suggested it at once.

Q. You have testified that you saw Indians fishing at Choke Cherry Point and Tenino. Were there any Indians from the north side fishing there?

Mr. Bennett: I want to object to the question.

Court: I am not going to be controlled by it if it is not proper testimony.

Mr. Bennett: I know, your Honor. I simply want it understood that I am objecting to all these leading questions. I know
277 it is in your Honor's discretion, but kind of by way of a punctuation mark I would like it understood that we are objecting all the time to these leading questions.

Court: Very well. You may have your exception.

Interpreter: What is the question?

Q. (Question read.)

A. They had fished from both sides, I believe, I have said before. The Indians from that side and this side, yes.

Recross-examination:

Q. Now, these Indians that landed at this place that he has described. Ask him if they came from the Big Eddy on the Washington side.

A. The people at the Big Eddy on the other side, and other tribes from far and near on the Washington side, crossed the same place.

Q. Yes; but ask him if they landed. What I want to get at is whether they landed on the Washington side at the Big Eddy.

Court: Going from this way over.

Q. When they went over on the other side, or when they came from the other side, was their landing place on the other side at the Big Eddy?

Interpreter: On the Washington side?

Q. Yes; on the Washington side.

A. That was their particular landing place on the other side just the same as this landing on this side at the eddy and other places.

Q. At the Big Eddy?

A. Yes, on the other side.

Q. What I want to find out—I want to get it definitely in the record whether their landing place was at the Big Eddy on the other side.

Interpreter: That is what he said.

Q. All right. That is what I am trying to get at.

Excused.

278 GEORGE TOMMY, a witness called on behalf of the Government, being first duly sworn, testified as follows: Charley Pitt, Interpreter.

Direct examination.

Questions by Mr. Rankin:

What is your name?

A. George Tommy.

Q. Where do you live?

(Witness speaks in Indian.)

Mr. Rankin: What does he say?

Interpreter: I want an interpreter, he says.

Mr. Rankin: All right. I will use the interpreter.

Q. Where do you live?

A. I have made my regular home at Warm Spring for the last seven years.

Q. How old are you?

A. 55 as near as I can get at it.

Q. Where were you born?

A. Over on Skein, over here on the Washington side.

Q. At Skein?

A. At Skein.

Q. What tribe are you?

A. I am a tribe of Skein and Wasco.

Q. Skein and Wasco. What was your mother—what tribe did she belong to?

A. She belonged to the Skein tribe.

Q. And your father?

A. He is from Tenino, on this side.

Q. Oregon side?

A. Yes.

Q. Have you ever fished?

A. I was brought up as a fisherman.

Q. Where did you fish?

A. He says, that as far back as I can remember I used to fish away down here below the lower end of the fishing points.

279 Q. Did you fish at any other place besides the lower end?

A. I have fished at the point called Kum-sucks and other fishing points as the water raised or fell—different places.

Q. Has he ever fished on the Washington side?

A. I have fished on the other side, too.

Q. Ask him what is the fishing place called that is furthest down the rapids and nearest The Dalles.

A. Kum-sucks, that is the one.

Q. Kum-sucks?

Interpreter: Yes.

A. That same name comes under Wah-sucks.

Q. Has he ever fished at Kum-sucks?

A. Yes, I have when I was a boy.

Q. Talk loud, Charley.

A. I fished at Kum-sucks when I was a boy.

Q. Who else fished there, if any one?

A. Yes, there is others—Wasco Charley for one.

Q. Any others?

A. And Smioke.

Q. What tribes fished there?

A. He says, the Indians from the other side, from Mul-Mul. That is Simcoe.

Q. What other tribes fished there besides Simcoe?

A. Wish-ham tribe.

Q. Any others? Tell him to name them.

A. In the early day they used to fish from the Hood River or the Hood Rivers and part of the Cascades used to fish there in the early day.

Q. When does he first remember seeing the Indians fish at Kum-sucks?

A. As far back as I can remember I have seen people fishing there, 25 years or more. As far back as I can remember, there is people fished there.

Q. When did he last see them fish there?

280 A. Oh, it was a good many years back; a good many years back, a long time.

Q. During the time that he saw them fishing there, did they come there regularly or just once in a while?

A. They came regularly every year as they had to.

Q. Why?

A. For supplies.

Q. What did they do with these fish when they caught them?

A. He says, they dried them and prepared them for their winter use in various ways. I haven't time to tell you how they fixed them, but they fixed them different ways.

Q. How did the people from Mul-Mul get to Kum-sucks?

A. The Indians had canoes long before they ever knew what a horse was. They altogether traveled up and down the river in the canoes.

Q. Did they cross the river in these canoes to Kum-sucks?

A. Oh, yes; they crossed backwards and forwards from the other side to Kum-sucks.

Q. Where?

A. There was one crossing a little above the cannery and one be-

low the Kum-sucks, and another crossing up there, head of Tenino, above Tenino.

Court: Did he say there was a crossing below Kum-sucks?

A. Yes, sir.

Q. What was the relation of the Indians with regard to this fishing point? Did they dispute it or quarrel over it or not—that is Kum-sucks?

A. He says, the people long before my time were married from the other side of the river and this side, from the Kum-sucks side; children today living there. Their descendants lives on each side of the river today.

Q. Was it friendly or not?

A. We never had war.

Q. They never had war?

A. No; always peace.

Q. Does he know Sam Williams?

A. Yes, I do.

Q. How long has he known Sam Williams?

281 A. I could not swear the exact time, how long, because I never thought much about it after knowing him when I saw him; but it must be something like toward 20 years.

Q. Where has he known Sam Williams? Where did he first meet him?

A. In City of The Dalles.

Q. What does Sam Williams do? What is his business, if he knows?

Interpreter: At that time or now?

Q. At that time.

A. He says he wasn't doing much of anything. He says he was just married then that year I saw him and wasn't doing anything at that time.

Q. What did he do after he was married?

A. Like a man, of course, he had to make a living; he started in with a dip net to fish.

Q. Where did he fish?

A. At this particular place, Kum-sucks.

Q. Did he ever see him fishing at Kum-sucks?

A. I have seen him myself.

Q. When?

A. As I said before, something like upward of 20 years ago.

Q. Has he seen him in late years?

A. I did see him of late years when he fished with a gill net later.

Q. About when was that?

A. I think about 18 years when he fished with a gill net.

Q. Has he seen him in recent years? Late years?

A. Yes, I did see him later when he had the wheel.

Q. When was that?

A. Five years ago.

Q. Five years ago. Where was he then fishing?

A. Right at Kum-sucks next to the river—out right at Kum-sucks, I mean.

282 Q. In the early times that he remembers, did many Indians fish there or not?

A. I have seen a great many Indians fishing there in the early day, when the Indians were many.

Q. Were as many fishing the last time he saw them, generally speaking, as in prior times?

A. He says, yes, they fished in great number of Indians fished there. And when the fishing season run out at this point, they moved up towards Tenino and fished—the later points why they fished.

Q. I mean in more recent years. Just a few years ago did as many Indians fish at Kum-sucks as used to fish there in early times?

A. I don't say as I can describe the number of Indians of later years. After the Indians were taken out on the reservation, as Tomar Handley stated here, they were taken out and other tribes was taken away from the river, but my parents stayed on the other side.

Q. On the Washington side?

A. On the Washington side at that time, and after that Mr. Seufert took possession of the fishery on this side; but no Indians was from the other side.

Q. Did he ever fish at Kum-sucks personally, himself?

A. Yes, I have.

Q. How did he fish there?

A. With a dip net. I was brought up to use a dip net from a boy up.

Adjourned until Monday at 2 P. M.

PORTLAND, OREGON, January 24, 1916.—2 p. m.

GEORGE TOMMY resumes the stand.

Charley Pitt, Interpreter.

Cross-examination.

Questions by Mr. Bennett:

Ask George Tommy if he ever went to school.

283 A. No.

Q. Ask him if he can talk English.

A. No.

Q. Ask him if he does not understand English, white man's talk.

A. Few simple questions. A few words, he says, I understand; plain questions.

Q. But he cannot talk it at all?

A. No.

Court: Tommy, where do you live?

A. I live Warm Spring now.

Court: How long have you lived there?

A. Seven years.

Court: Do you know the early customs of the Indians?

A. (No answer.)

Court: You better examine through the Interpreter.

Mr. Bennett: I think I will try to examine him awhile, your Honor, and see how I get along with it. He seems to me to talk pretty well, talk in simple language. I will try to be careful to make my language simple.

Court: Tommy, you understand him as near as you can without the Interpreter—see what you do.

Cross-examination continued without the Interpreter:

Q. Do you know Frank Seufert, who sits here?

A. (No answer.)

Court: You tell him that it is the order of the Court to answer Judge Bennett's questions as near as he can direct.

Q. Do you know Frank Seufert?

A. Nicki kumtucks.

Q. You mean you don't understand that?

Court: He means by that that he understands Seufert; he knows Seufert. That is a part of the Indian language that I learned as a small boy.

Q. You do know Mr. Seufert?

A. Nicki kumtucks Seufert; Frank Seufert, Ed. Seufert.

284 Q. Have you known him a long time? Have you known him a good many years?

A. Oh, nicki kumtucks long time.

(Examination continued through Interpreter:)

Q. Ask him if he has known Mr. Seufert ever since he was a little boy.

A. He says, I knew Mr. Seufert when I was a full-grown man.

Q. Ask him if he knew Mr. Seufert before he was a full-grown man.

A. He says he knew him when he become a man, when Mr. Seufert first got there.

Q. Ask him how old he was when Mr. Seufert first came there.

A. I could not say. It might be 30 years.

Q. Might be what?

A. Might be 30 years ago; might be 35 years ago.

Q. Ask him how old he was when he first knew Seufert.

A. Oh, he was upward of 20; he was a man grown.

Q. Ask him if he means that he was about 20.

A. He says that I was either 20 or 25; he says I was married at the time.

Q. Ask him where he lived when Mr. Seufert came up there.

A. I was living at the Skein.

Q. Ask him if he ever lived on the Oregon side of the river before he went to the Warm Springs.

A. I have never lived steady on this side, on the Oregon side, but

I have fished there every year regularly on this side, on the Oregon side.

Q. He didn't move over on the Oregon side until he went to the Warm Springs; that is, I mean he didn't move over on the Oregon side to live until he went to the Warm Springs?

A. He says, yes, that is the time he moved out. He went clear on out, only as he had fished at different times at different seasons on this side.

285 Q. Ask him if Skein is right opposite Celilo.

A. Skein was a little bit further up the river than Celilo; pretty close.

Q. Ask him to look at that and see if he recognizes the place.

A. Yes, on Skein.

Q. Yes, Skein and Celilo. Ask him if he recognizes what that is a picture of.

A. I believe that is Skein here, down here Taffe lived. There was a white man they called Taffe, he lived here.

Q. Ask him if this is Celilo Falls here.

A. That is on the island, he says.

Q. Ask him if this falls here is Celilo Falls.

A. Yes, that is the falls here.

Q. What does he say?

A. He says, right here I have one fishing point right here, my own. It is my uncle's, the Chief's fishing place, Humia.

Q. I wish you would take this pencil and mark where Skein village is over there.

A. Skein.

Q. Ask him to mark where Skein village is.

A. Right there, he says; this is as near as I can make out.

Q. Let me mark it, if there is no objection.

A. He asks whether the railroad track don't make a bend and run down that way. He is asking.

Court: He is asking that question?

Interpreter: Yes.

Court: Do you know whether it does or not, Judge?

Mr. Bennett: I don't know about the railroad.

Q. Now, Skein is where I have marked this cross on the map, is it, or picture?

A. Yes. That is where Skein is.

Q. Ask him if that is where he says where he was born.

286 A. That is just what he is now saying, that that is where I was born.

Q. What say?

A. That is just what he says, that is just where I was born, right at that place there.

Q. Now, ask him if this is all fishing water out in here, fishing places.

A. He says, right there is my fishing point, my father's fishing point right there.

Q. Right here?

A. Yes, right there where that white spot is.

Q. I will mark a letter "A" there.

A. Yes, right there.

Q. Now, ask him if his father's fishing point was where I have marked the letter "a."

A. Yes.

Q. Now, ask him if there was lots of other Indians had fishing places on these rocks about where I have put the letter "a."

A. George Me-nin-ocht has a fishing point right along close by this place where you marked.

Q. Ask him if there was lots of other Indians had fishing places on these rocks about there.

Mr. Rankin: Now, your Honor, at this time I will have to interpose an objection. This is not cross-examination, and I cannot see how it relates to any of the issues in this case. We admit the Indians fished there. The testimony is they fished from The Dalles to Celilo. This is one of the fishing places. If the Judge cares to go into it, he can show 15 or 20 places there where the Indians have fished from time immemorial.

Mr. Bennett: He asked this witness on examination where he lived and whether he fished on both sides of the river there at that time as well as at other places all along up and down that river. It seems to me that we are bringing out facts that are very pertinent.

287 Court: If you have to go into it, now is just as good a time as any other. I don't think it would confuse the record. But if we go into detail as to all these fishing places, it is going to take a long time.

Mr. Bennett: I don't think I will take very long, your Honor.

Mr. Rankin: May I also add to my objection that Celilo is apparently on the Washington side of the river and that it would serve to confuse the record and relates to a place not in issue.

Court: Very well. I will overrule the objection.

Q. Now, have him answer that question, whether there were other Indians had fishing places around there.

A. He says, yes, there was quite a few, quite a number of fishing points that the Indians fished on. My uncle Humia had another fishing point further up this way.

Q. Now, ask him if the big island which I have marked with a letter "B" is also a fishing place for the Indians.

A. He says, yes, my uncle Humia lived there, right there, there where you have marked that. That is his fishing point also, and he lived there most (pointing to letter "B").

Court: What did he say about that last part?

A. He used to go from there up here.

Mr. Rankin: He used to go from "B" up to the end of the point.

Mr. Bennett: What was that last answer?

A. He said his uncle had another place up there. He used to fish up there too.

Q. Was your uncle's other place at this point which I have marked with a "C"?

A. Yes, right there. Right in here; in here around to there.

Q. Now, ask him if there were lots of Indians had fishing places on that island.

A. There was Indians fished in these fishing places, as I
288 can't number the Indians; but they used these fishing places here.

Q. A lot of Indians?

A. Yes.

Q. Now, ask him if this island, which I marked "D"—can you make that out—is on the Oregon side.

Mr. Rankin: What do you mean by the Oregon side, Judge?

Mr. Bennett: On the Oregon side of the main channel. You may put it that way.

A. This island was mostly on the Oregon side.

Mr. Bennet: I offer that in evidence, and ask that it be marked Defendant's Exhibit A.

Mr. Rankin: If the Judge can explain its relevancy I have no objection, but I feel that on that ground I must interpose an objection.

Court: I will overrule the objection and let it go in.

Marked "Defendant's Exhibit A".

Mr. Rankin: Very well. We are allowed, your Honor, an exception?

Court: Yes.

Q. Now, ask him when the Indians spear, what kind of water they spear in.

A. The Indians didn't spear for salmon every place. Whenever the water fell to certain points, spearing points, why, there they caught the fish with spears; but not every place.

Q. Ask him what kind of a place is a spearing point.

A. It is generally for good spearing place there is an eddy, where the water boils and bubbles up. That throws the fish up, when they spear them as they are thrown in sight.

Q. Ask him if the water is swift where they spear.

A. He says, yes, a great deal of the times that they spear where the water is swift, and salmon are very hard to hold after he is speared in swift water.

Q. Ask him whether the water where they spear is deep or shallow.

289 A. Generally it is in deep water, as they have their spears tied to the shore with a rope, and they just throw their spears away out in the deep water.

Q. Ask him if they throw the spears or hold them in their hand, hold the handle in their hand.

(Witness illustrates with handkerchief.)

A. He says it all depends on how far the spear has got to be thrown. If it is too far for the length of the pole, why the pole is tied to the shore; and if it is not too far the Indian can throw his spear and have the end of the spear in his hand yet.

Q. Ask him if that is the kind of thing they spear with (showing witness instrument).

A. Yes, that is just the same thing that they spear with.

Court: How is the handle attached?

A. Before the white man ever came, this was not iron. It was all bone; this point here as well as this here.

Court: How is the handle attached to that, the spear handle attached to that—the long handle that they used.

A. He says he can't tell you as good as he can mark it out on a piece of paper.

Mr. Rankin: Well, let's give him a piece of paper.

(Witness marks on paper.)

A. Now, that is just the way it goes.

Court: The two of them are put in that way?

A. Yes, sir; the end of those sticks that run out fit right in here (crotch). Those two sticks are fastened on the pole, and here is the pole. And this is long, just as long as you can get the pole. Now, here is the long pole for deep water, according to the condition of the water, and here is a short pole for another place of spearing—difference in the length of the poles.

Q. Ask him if he uses two of these on one spear or only one.

A. I use both. That is to make sure to hit. If you miss with one spear, why hit with the other.

290 Q. Ask him if they always use two of these.

A. They use just one on creek spearing.

Q. Now ask him if the spear goes clear through the salmon so that they catch them like that.

A. Yes, it just turns that way. When it goes through on the pole why that thing turns cross-ways.

Court: I don't understand how that is fixed on to the pole yet.

Mr. Bennett: Well, I am going to ask him about that, your Honor. I don't know as I can straighten it out, because I don't know—my understanding of it is that they don't use them both, but it may be that they do.

Q. Now, do they stick the pole in here like that, the end of the pole in like that?

A. Yes. This part that goes in there is sharp. It is small so it slips in there.

Court: When the spear strikes the fish it becomes detached from the pole?

A. Yes. That is the way it is put on. That knot is tied there so that will just hold. That knot keeps that spear in its place.

Q. Mr. Bennett: Your Honor sees when it goes through the fish it just catches it and pulls it out like that (illustrates).

Court: I wonder if they have a patent on that.

Mr. Rankin: It would be a good patent, all right.

Mr. Bennett: I guess it has run out.

Mr. Rankin: I guess it has—prior public use. Are you going to offer these in evidence?

Mr. Bennett: We are not at this time, but we will if you like.

Marked "Defendant's Exhibit B."

Q. Ask him what kind of a place they fish in with a dip net.

A. Whenever the water comes up to fit the fishing places, there is where we fish. It may be shallow or it may be deep.

291 Q. Ask him if it is swift water that they fish in.

A. Yes. Yes, in swift water just the same.

Q. Now, ask him if it don't have to be as deep as their net or deeper. Ask him if it don't have to be as deep or deeper than the height of their net.

Interpreter: The water?

Q. Yes.

A. We fish with dip net perhaps three feet deep in the water, or a little deeper. Dip the dip net just a little bit out of sight to catch salmon.

Q. Show him that picture and ask him if that shows the kind of water that they dip in.

A. No, that is too much falls there. We can't fish with dip net there.

Court: Well, on this side.

A. Now, right here where they fish with a dip net, right here; and up this way somewhere along here they catch them with a spear.

Q. Now, what was your answer?

A. Right here is where they fish with a dip net. Right here and up along here and places like this, where they catch them with a spear. It is not on the falls.

Q. Ask him if this place that I have marked with a letter "E" is the one where he says they would fish with a dip net.

A. I don't know exactly where that is, where you have marked it, but he says the place something like that.

Q. Here is where I have marked it, right here.

A. Which side is that?

Q. Which side?

A. Which side is that, yes.

Q. Well, as I understand it, the Oregon side.

A. He says he can't make out where that is, or how it is there. It is so small, he can't make out where that is. He can't point out the points like you would like to. It is a little difficult for him to point out anything there.

292 Q. I know of no way I could point this out to him any better.

Interpreter: Is that Celilo? He asks is that Celilo?

Q. That is below Celilo, a little ways below Celilo, just below the falls. Ask him if he knows where Mr. Taffe had a run-way a few years ago, running away out into the river there.

A. I don't know where he had that accident, but he says I know where his house is.

Mr. Bennett: Well, I will ask that this be marked for identification, your Honor, Defendant's Exhibit C.

A. He had a wheel there he says too, at a certain place, but he don't know exactly where he could make your Honor understand.

Q. Now ask him how old he was when he claims to have fished the first time down at Three Mile Point.

A. I could not tell you my age at that time. He says I was just about that high from the ground.

Mr. Rankin: Three and a half or four feet.

Mr. Bennett: Well, I guess it is about four feet, isn't it?

Interpreter: About.

Q. Ask him if Wasco Charley was down there then.

A. Yes, he was there, he says.

Q. Ask him how he went from Skein down there when he went to fish that time, that first time.

A. He says, because that the fishing was much earlier down there than up here. That is why he was down there.

Q. Tell him I am not asking him about that. Tell him I am asking him how he went, where he crossed the river and how he went down there.

A. He says, there is many places to cross for me, all along the river, up and down the river—many places just like there is wagon roads out in the country.

Q. Well, ask him where he crossed that first time that he went down there to fish.

293 A. We got on the canoe at the other side and came right down the river, down to Tenino, and there we tied our canoe on this side. We floated right down the stream, down to Tenino and tied our canoe at Tenino.

Q. Ask him if he got in the canoe at Skein, at his own village.

A. Right from Skein, yes.

Q. Right from Skein?

A. Yes, came on down, down the river.

Q. Ask him whereabouts he got out of the canoe and left the canoe on the Oregon side.

A. I landed at Tenino and got out of the canoe and tied the canoe at Tenino.

Q. Ask him if Tenino is opposite Wish-ham.

A. Very near, he says; very near opposite.

Q. Ask him how long he stayed down at Three Mile Point, that time.

A. About a week; about a week; as the water began to fall, then we left.

Q. Now, ask him how he got back from Tenino to Skein.

A. We generally sail up when there is a good wind; put up a blanket and sail up to Skein.

Q. Ask him if he knows Ten Mile Rapids.

A. No, not by that name; not by the English name.

Q. Now, ask him if he could sail all the way back from Tenino to Skein.

A. That is just what I said. I could do it whenever the wind was strong enough.

Q. Ask him how he got back when the wind was not strong enough.

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A. Why, we used to have poles, long poles to pole the canoe up alongside of the river; either side we could pole the canoe with a long pole.

Q. Ask him what kind of a canoe they had.

A. Why, it was a common dug-out, made out of a tree. My father made the little canoes out of trees.

Q. Ask him how many men it would carry.

A. It all depended on the size. If the canoe is big enough it would carry two or ten, either ways.

Q. Ask him if that is the way he always went when he
294 went down to Three Mile Rapid.

A. That is the way that we had to travel.

Q. Now, ask him when *ge* got down to Tenino how he got the rest of the way from there down to Three Mile Point.

A. We packed what we had either way. It is the only way we had of traveling.

Q. What is that?

A. We packed our stuff on our backs, backwards and forwards, as we traveled.

Q. Ask him how far it was from Tenino down to Three Mile Point.

A. I can't say as the exact distance. It is either four or five mile. I don't know really.

Q. Ask him what kind of a road it was.

A. At that time we only had trails along where the railroad track is going in places. We only had trails all along the river, rough trails.

Q. Ask him if they had to travel over the rocks.

A. It is just what we did. We traveled over rocks and up and down.

Q. Ask him if it was a rocky road all the way.

A. Oh, no; not all the way. There was good dirt in places and places it was rocky.

Q. Ask him if he had to go by Mr. Seufert's place.

A. They had a trail close by there, yes, where he now lives. They had a trail that passed there pretty close before Mr. Seufert was ever known.

Q. Ask him how they got across Five Mile Creek, if they had a bridge.

A. They had a canoe there. There was a canoe there generally all the time, just left there a purpose for crossing if they had to cross.

Q. Ask him if they crossed Five Mile Creek in a canoe.

A. Yes, down there to the river. They would cross there.

295 Q. Ask him how they got down the steep bank of Five Mile Creek.

A. Why, that part on Five Mile where it is so steep, we used to go down afoot and go up and go on.

Q. They climbed right down the steep bank and climbed up the steep bank on the other side, did they?

A. Yes, walked down and walked up.

Q. Ask him how they brought their fish back—how he claims they brought their fish back.

A. My father used to catch the fish and my mother cut them up and dried them till they were light enough to pack.

Q. Ask him if he claims they could dry the fish in a week.

A. The salmon was not all exactly dry through and through, but it was dry enough to be light to pack.

Q. Well, ask him if they packed them back on their backs.

A. Many a time when I was a little boy I had to carry my own pack, what I could pack, salmon.

Q. Ask him if they could pack them all back at one trip.

A. Oh, no; they generally took two and three days to pack what we had; sometimes more, sometimes less. We could not pack it all in one load.

Q. Now, ask him when was the last time that he went down there to fish as he claims.

A. The last time, I think, that my parents were down there fishing, the time that Mr. Seufert had his cannery that burned down. I believe that is about the last time we were down there fishing with my parents.

Q. He says that was about the time Mr. Seufert's cannery burned down?

A. He says he thinks that is about the last time his parents went down there for fish while he was with them—about that time.

Witness: Wah-sucks.

296 Interpreter: Wah-sucks, yes.

Q. Ask him how they got in that time to the place where the fishing was. Ask him if they had to go through a fence that time.

A. They hadn't fenced that part of the trail at that time. He had it fenced this way further down the river, along about Winan's place; but the other part was not fenced.

Q. Ask him if there was a fence around this point, Three Mile Point, at the time that he went there last.

Interpreter: Wah-sucks, you mean?

Q. Yes.

A. No, not then.

Q. Now, he says that there was a place where the Indians crossed below this Three Mile Point. Ask him if that was down in the still water below the rapids.

A. Yes, I said that there was a crossing below the rapids, was good still water.

Q. Ask him if it was down in the still water.

A. That is what he says, it was below the rapids in the still water. There was still water where we crossed.

Q. Ask him how far that was below this point. Ask him if it was about half way between Three Mile Point and The Dalles town.

A. It is just about where Sam Williams' shack is now.

Q. About what?

A. Sam Williams' little house, that is where they crossed, right along in there, where Sam Williams' little house is now; the last house Sam Williams has got today.

Q. Where Sam Williams' homestead is?

A. The crossing was there.

Q. Ask him if it is where Sam Williams' homestead is.

A. I don't know exactly where his homestead is, but I only know where his house is. It is down this way, down the river, opposite to where the Indians crossed.

Q. Ask him if it is about a mile and a half below this point.

A. No.

Q. How far is it below the point?

A. Maybe a quarter.

Q. It might be a quarter.

A. It might be a quarter, he says, from the point.

Q. Now, he has testified something about a gill net. Ask him what kind of a net that is.

Interpreter: What kind gill net?

Q. Yes.

A. He says I have got all the boards or stuff that I make gill net with — at home. If I had just knowed, I could have showed you what kind of a thing the gill net is.

Q. Ask him if it is a long net that floats in the water.

A. No, it is short.

Q. What say?

A. He says it is short; it is just that long (Interpreter spreads arms). He said, a little longer than the salmon itself.

Q. Ask him if it is a straight net.

A. It is round like a gunny sack, the shape the net is made.

Q. Ask him if he means a gill net or a dip net.

A. Well, I mean the dip net.

Q. Now, I am asking him—he spoke about a gill net. Ask him what kind of a net a gill net is; not a dip net.

Witness: Oh, gill net.

Interpreter: Gill net, yes.

Q. Ask him if the gill net is not a great, long net.

A. Yes, a gill net is made long, and salmon runs their heads in and they get fastened.

Q. Ask him if they don't fish with them down in the river.

A. Not in the early days.

Q. What say?

A. Not in the early days; they knew nothing about those kind of nets.

298 Q. I know; but these days.

A. Sam Williams has, I believe, fished with a gill net.

Q. Ask him if Sam Williams didn't fish with this down in the river.

A. With gill net?

Q. Yes; down in the river; if he didn't let them float in the river.

A. Yes.

Q. Ask him how long ago it was that he claims to have seen Sam Williams fishing with a dip net.

A. Oh, he says that was long before that he fished with the gill net before.

Q. Which did he fish first with—the gill net or a dip net?

A. The dip net.

Q. Ask him if that was about 20 years ago.

A. I hardly know; it may be 20 years; I hardly know.

Q. Ask him if Sam Williams was fishing with a dip net when he first went down there.

Interpreter: When he first went down (points to witness).

Q. Yes.

A. Yes, the time that my parents were last there.

Q. What say?

A. The time my parents came down last, I believe he was fishing with his dip net then.

Q. Ask him if he was fishing with a dip net the first time he went down there.

A. Yes, a little before that he was fishing with a dip net.

Q. Now, ask him where he claims Sam Williams was fishing with a dip net in those years.

A. Right north from Charley Wasco's house into the river; north from this point right out into the river.

Q. Ask him if he was fishing right at the point.

299 A. Right at the point, yes.

Q. Ask him if that was his regular fishing place.

A. The fishing point was not his by any means. It belonged to his wife's father and relation, that kind of had a claim on that point, particular point at that time.

Court: Whose father and relation?

Interpreter: He don't understand.

A. He says the fishing point belonged to Sam Williams' wife's father and near relations at that time. That point there belonged to them, where Sam was fishing.

Q. Well, ask him if that was the place where Sam Williams always fished.

A. Yes, since that time.

Redirect examination:

Q. When was the first time you went down there with your parents? What year was it, if he knows?

A. As near as I can remember, about 18 years ago.

Q. State whether or not Sam Williams was fishing there then, when he went down 18 years ago.

A. He was fishing there, yes.

Examination by the Court:

Q. Ask him how old he is.

A. Fifty-five.

Q. Ask him how old he was when he was married.

A. Why, he says, I can't exactly say how old I was. My parents made the marriage for me when I was a little boy, and I had to go through the old custom.

Q. Ask him how old he was when he moved from Skein on to this side.

A. Something like 48. It is only seven years ago since I left up there.

Q. Only seven years since he left?

A. Yes.

Q. I think he told at first what tribe he belonged to. Ask him what tribe he belongs to.

A. He says that I am glad you want him to repeat the truth. I tried to tell the truth to the court.

Q. Well, I don't remember it.

A. He says that my father was a Wasco, belonging on the Oregon side, and my mother belonged to the Skein tribe, and they were married at the time.

Excused.

L. A. McNARY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Your name is Lawrence A. McNary?

A. Yes, sir.

Q. You are an attorney at law, residing in Portland, Oregon?

A. Yes, sir.

Q. How long have you resided in Portland, Mr. McNary?

A. About 27 years.

Q. What official positions have you had, if any?

A. I never had but one official position. I was city attorney of the city from 1902 till 1907.

Q. Where were you born, Mr. McNary?

A. I was born in Wasco county, Oregon.

Q. What year was that?

A. January 27, 1866.

Q. Describe the location of your father's land and where you were born at that time.

A. Well, where I was born was on Eight Mile Creek, about 8 miles from The Dalles, in Wasco county. When I was about a year old my father moved to Klickitat county, Washington, the house being

301 about 2½ miles from Rockland and about a mile from the Columbia river, between a mile and a mile and a half from the Columbia river, opposite the Seufert cannery. There was no cannery there at that time, however.

Q. Rockland is now known by what name?

A. Grand Dalles. I believe it was changed to North Dalles at one time, and later to Grand Dalles.

Q. Who purchased your father's property there afterwards, when he sold?

A. He traded it for farming lands in the Willamette Valley, to a man by the name of Frank J. Taylor. Frank Taylor afterwards sold it to O. D. Taylor, a man of the same name but I think no relation. And the same land, I think, together with other lands in that vicinity, is now owned by Mr. Rorick.

Q. That is James?

A. J. T. Rorick, I think, of The Dalles.

Q. When do you recall in your younger years that you became acquainted and remember the Columbia river, from, say, The Dalles up to Big Eddy?

A. Well, I have a fair remembrance back to about 1871 or '2; and from 1872, say, until the beginning of 1877 or late in 1876 I have quite a distinct remembrance of that locality and the doings there.

Q. Do you recall whether or not the Indians fished along the river from the foot of Three Mile Rapids up to Big Eddy?

Mr. Bennett: It is pretty leading.

Mr. Rankin: I asked him if he recalls.

Court: You may answer.

A. They did up to some distance above the Big Eddy.

Q. Particularly I am interested in the lower section of what portion of the river, Mr. McNary. State where they fished in your recollection.

302 A. They fished, within my knowledge, all the way from some mile or two above the Big Eddy down to the Three Mile Rapids, although right at the Three Mile Rapids I think the bank was somewhat precipitous there, and the fishing was mostly at that point on the other side of the river.

Q. How do you recollect of their fishing there?

A. I saw them.

Q. Tell the circumstances.

A. Well, my father's land extended from some distance beyond the Big Eddy, east of the Big Eddy to a point down about opposite Three Mile Rapids, as I remember. The land from there on around The Dalles was owned by a man by the name of Connell. But the Little Eddy, as we called it, which is, I think, about that point there (points to map) was somewhere near the dividing line between my father's land and Mr. Connell's land.

Q. May I mark on this map Little Eddy? Is that the point?

A. That is my remembrance of the point that was then called the Little Eddy.

Mr. Bennett: All right. You might put the initial of Mr. McNary's name, so that we may know that is according to his testimony.

Mr. Rankin: L. A. McN. I will put it.

A. And that was all a pasture along there, my father's. I think my father only had about 750 acres of deeded land, but he had some 2000 acres under fence. The rest of it, as I remember, was Government land, and it extended along the river for some distance above the Big Eddy. All of that was a pasture in there, and he was in the stock business, also had a dairy. And I rode over it almost daily on a pony in going after the cows and the cattle; went down to the river many times and accompanied my father. He used to have the Indians catch driftwood, particularly in the Big Eddy, and take it out on the beach. There is a beach on the
303 Big Eddy, which I recognize there as the highest point. I think also there is a beach lower down on this side; but there is one there where there is a large gulch or canyon came into, and I would go down there with my father to get wood.

Q. Do you recall about where those beaches were. Just mark them with a pencil so we will have some reference to them.

A. There is a beach right in there.

Q. Just mark it, please, Mr. McNary.

A. I think now that the North Bank Road has built a fill right along there and cut off the draw above and runs very near the water at that point now. There was another beach, a little beach right in, I think, about at that point.

Q. Mark it, please.

A. That may be a few feet above the water when the water is low; but when the water was a few feet above low my remembrance is that the sand ran down to the water.

Q. What Indians did your father deal with there?

A. Well, all of the old residents there were friends of him. There was, the Chief of the local tribe there at that time was Colwash, and he and my father were very intimate friends.

Q. Just before you go on, who was Colwash besides being Chief, which side did he reside on?

A. On the Washington side of the river.

Q. Do you know what tribe he was a member of?

A. Well, we called those the Tumwater Indians there; whether that was properly the name or not I don't know, but that was the name by which they commonly went. If you want me to name some of them, I will name those that I remember.

Q. Yes.

A. There was old John, one-eyed John, a well-known Indian in those days; old Winnie and Charley—he is now known as old man Charley; he is still living there. I think he is about the
304 only one of the old Indians that now resides there.

Q. What tribe did these belong to, if you know, Mr. McNary?

A. Well, we called them Tumwater Indians. They were an offshoot, I presume, of the Yakimas. They fraternized with the

Yakima Indians, because every season in March or April, I presume, the Yakima Indians frequented that place for fishing. They came from the Yakima country down over the Goldendale road. Some of them came directly down by our place and went through to the river. Others, I think, came down by Columbus above the Tum-water Falls and came down the river from that direction.

Q. Those that came down the Goldendale road and down through your place, did you ever talk with them or have any intercourse with them?

A. Quite frequently.

Q. In what ways?

A. Well, that was with reference usually to their pasturing of their horses and ponies. About the only time that my father had trouble with the Indians there was when the Yakimas residing in the Yakima country would come down for the fishing season. They would hobble their horses and put them in our pasture, and usually old Chief Colwash would remonstrate with them and make arrangements for them to keep their horses out of our pastures. And it oftentimes resulted in conferences of them coming up to our house with Colwash and discussing the matter of their fishing and the pasturing of their stock, etc.

Q. These were Yakima Indians.

A. Those were Yakima Indians, yes.

Q. Would they leave their stock on your side at times?

A. Yes; usually did.

Q. And where did the Indians go then?

A. The Indians fished both on that side, and as I remember it on the Washington side. I think that some of the Yakimas
305 would go to The Dalles and from there up on the Oregon side of the river. I don't know that I ever actually saw them going up on the other side, but it was from the conversations that I heard with reference to the fishing between the Indians and my father, I think that some of them did.

Mr. Bennett: I don't think he ought to tell what he heard.

Mr. Rankin: I don't know why, your Honor. It is general report.

Court: I think I will hear this testimony, but confine it in as narrow a scope as you can.

Mr. Rankin: Very well, your Honor.

Court: Indians talk tradition a good deal and I suppose this is a matter of tradition, to some extent.

Mr. Bennett: I believe I will ask your Honor for an exception.

Court: Very well.

A. I will say that I have seen these Yakima Indians pass our place going to The Dalles and didn't come through our land to the fisheries on the Washington side.

Court: Well, Mr. McNary, now where did they fish on the Washington side between Big Eddy and Little Eddy?

A. The fishing places on the Washington side between the Big Eddy and the Little Eddy were not, as I remember it, very good

fishing grounds. I think that along on the rocks and along here they would fish below the Big Eddy, and perhaps around here. But, as I remember it—in fact, I have been there recently—the rocks are precipitous around in here and also continue to be until you—well here in the Little Eddy and along about this point there are places where, as I remember it, they fished at that time (referring to map). I don't think that I ever saw them fishing below the Three Mile Rapids.

306 Court: Well, now, on this side, Mr. McNary, where did they fish?

Q. On this side through here now.

A. The Indians used to go out from the Big Eddy, that was where I would see them launch their canoes and boats most frequently, and they would come out through here. I don't think that they could land immediately across here. I think there are some openings along in here in the bluffs where they could land, or down farther here. There are a number of openings, I think, along down about at this point. And I don't know that I ever actually saw an Indian get into a canoe and cross the river, but I know that they did do it, and that they could not have if there had been any inhibition on their fishing over here, I think that I would certainly have known it, because the relation of the tribes were well known to me.

Q. State what those relations were.

A. Oh, they were entirely friendly. There was no trouble between the Indians on the opposite sides of the river there.

Q. Now, Mr. McNary, do you recollect what the banks were along here?

A. Yes.

Q. Or by what the engineer has termed location 6?

A. Yes. Those banks are rocky and mostly at that point sheer banks, but not high above the water.

Q. That is, you are acquainted with the Indian method and habit of fishing?

A. Yes, at that time.

Q. Would it be possible for them to fish—have you ever seen them yourself, fishing from this point, head of Three Mile?

A. I can't say that I ever saw an Indian fishing right from that point. I know they could fish there, though.

Q. They could fish there?

A. Yes.

Q. Have you ever seen them fishing anywhere in the neighborhood?

307 A. Well, on the other side of the river was the only place that I can recall of seeing Indians actually using their dip nets.

Q. Yes, was that on the opposite bank or on the rocks between the banks?

A. How is that, Mr. Rankin?

Q. Was that clear on the opposite bank, or was it on the rocks between the banks, the rocks in the river.

A. I think that at this point here there are rocks that run out

from the bank, perhaps little islands they are; and as I remember it, I think that at numerous times I have seen the Indians fishing here on those rocks; just below the Little Eddy that is.

Q. You spoke of them crossing out from the Big Eddy and probably coming out this time. Was there any other place where you knew of them crossing?

A. Yes, they came down and crossed below the Three Mile Rapids.

Q. Were there any other places that you know of their crossing, Mr. McNary?

A. Well, the most—I think the most of them that launched their boats and canoes there came out from the Big Eddy, or else went below the Three Mile Rapids.

Q. Where did those Indians that left their horses on your father's place, or near there, camp?

A. They camped at what is now the station of Speedus on the North Bank Road, above the Big Eddy.

Q. Did you see any other camps along the river in the neighborhood of Three Mile Rapids?

A. Yes; they used to also camp down there just below the Little Eddy, along, as I remember it, along the head of the Three Mile Rapids.

Q. Which side, the Oregon or the Washington side?

A. On the Washington side. It is rather high there.

Q. Did you ever see them camp in the——

A. Oh, yes; I have seen their tents across the river there
308 opposite the Three Mile Rapids.

Q. On this point known on the map as Location 6?

A. Yes. I think, though, all along here, but not during high water. I think that that point was all under water at high water.

Q. What is the stage of the water generally, with relation to the fishing time?

A. The water began to rise along in March and April. I think that the fishing would commence along in perhaps the latter part of April or first of May, maybe earlier than that. It was, of course, during the muddy and the rapid condition of the river that the fishing was best.

Q. How many Indians do you think you have seen camped back of Location 6 point?

Mr. Bennett: On which side?

Mr. Rankin: On the Oregon side.

A. Oh, I think I have seen in looking across half a dozen or a dozen tents. They lived mostly in tents at that time, a round tent with a pole in the middle.

Q. Do you know what tribe those Indians belonged to?

A. Well, not having been over there at those tents, I could not say, Mr. Rankin. My belief was——

Mr. Bennett: We object to that, your Honor.

Q. On what do you found that belief, Mr. McNary—from your general knowledge, or what?

A. Well, and also specific knowledge of seeing them fraternize, my belief was that they were both the Wascos and the Yakimas.

Mr. Bennett: We object to the belief, your Honor.

Court: Well, we are talking in the language of tradition, more or less. I will let it go in.

Q. Mr. McNary, from your knowledge of the country there, was there any prohibition or objection to fishing at Three Mile?

A. None whatever.

309 Mr. Bennett: Your Honor, it seems to me that is going back too far. It is merely inference on his part, conclusion.

Mr. Rankin. He has got to testify to what his knowledge is, your Honor.

Mr. Bennett: He has said he doesn't know anything about that. He has said he never was over there.

Mr. Rankin: He didn't say that. I asked him if there was any prohibition. He said no, none to his knowledge.

Mr. Bennett: How could he know whether there was any prohibition if he had never been over there?

Court: Was there any interference with their fishing there?

A. No. No, there was none.

Q. Did they at all times leave their stock and equipment on your side, or did they at any time cross with the same?

A. I don't remember of ever seeing them cross stock there, either at the Big Eddy or below there.

Cross-examination. Questions by Mr. Bennett:

You say you have been up there lately, Mr. McNary?

A. Yes, sir.

Q. When?

A. Yesterday, I went up. I took the train and went up yesterday, and located some of those points there.

Q. With the idea of being a witness?

A. Yes.

Mr. Rankin: If you will pardon me, there is another question.

Mr. Bennett: All right.

Redirect examination:

Q. Did you see them returning back north, any of the Indians?

A. Oh, frequently; that occurred every season.

Q. With what regularity, Mr. McNary?

310 A. As the seasons came and went.

Q. What would they take back with them, if anything?

A. They would take back their horses and their salmon mostly that they caught. They would—I think their habit was mostly to dry it before going back to the Yakima country; pack it on their pack-horses.

Cross-examination continued:

Q. As I understand you, you lived over there near Rockland in 1867?

A. Yes, either late in 1866 or early in 1867.

Q. You were born in January, 1866?

A. Yes.

Q. And when did you leave that Rockland?

A. In about November, 1876; when I was about 11 years old.

Q. Between 10 and 11?

A. Yes. Well, I think I lacked a month or two of being 11.

Q. And you moved then to where?

A. Salem.

Q. And you have resided there ever since, until you came to Portland?

A. Until I came to Portland in 1888.

Q. Now, during those 9 or 10 years that you lived there, were you ever on the Oregon side of the river above The Dalles?

A. I was.

Q. How many times?

A. Well, perhaps not more than two or three times.

Q. How far up were you then?

A. Well, I think up about to Five Mile Creek, as I remember. I went out on Five Mile Creek with my mother, I can remember one time when I was about ten years old.

Q. Out on Five Mile Creek?

A. Yes, sir.

Q. Visiting?

A. Yes.

Q. Now, in going out there did you go up the river or did you go right out the road to Five Mile Creek?

A. Out the road to Five Mile Creek.

Q. Then you went—do you know where the brewery, what we called the brewery grade there at The Dalles is?

A. Yes, I remember quite well.

311 Q. You went up on the brewery grade then. That is about half a mile from The Dalles landing, isn't it?

A. I should judge about that.

Q. Yes. Then when you got to the brewery grade, in fact, before you got to the brewery grade, you left the river and went almost at right angles with it?

A. Yes, the road turned, I think, to the south somewhat.

Q. So you never went up between the bluff and the river there?

A. I think, Judge, that two or three times at least when we lived in The Dalles, it was in the winter time, that I have been up the river along near the bluff; near the river; between that and the bluff—yes, at least two or three times, up some two or three miles anyway; perhaps not as far as the mouth of Five Mile Creek.

Q. That would be in the winter time?

A. That would be in the winter or spring, yes.

Q. When you were living at The Dalles?

A. In the winter we generally moved into The Dalles and lived there during three or four months of the winter.

Q. And then as soon as spring opened so you could run your dairy business you went across again?

A. Went back to the ranch on the north side.

Q. If you were up there at all on the Oregon side, then, it was in the winter time?

A. Or spring.

Q. Early spring?

A. It might have been as late as March or April.

Q. Now, as I understand you, you don't remember very clearly whether you were up there or not at this time on the Oregon side?

Mr. Rankin: What time do you refer to, Judge?

Mr. Bennett: At these times he says he thinks likely he went up there in the winter time.

312 A. I have been far enough, Judge, to see the Indian camps at any rate.

Q. Now, is that the time you speak of having seen the Indians camped over there, when you say you think there were five or six tents. Did I understand you, five or six tents?

A. I said half a dozen to a dozen, I think.

Q. Oh, half a dozen to a dozen?

A. Yes.

Q. Now, when you went up there, did you go up the road? There is a road runs along under the bluff there, isn't there?

A. You mean on the Oregon side?

A. Yes, on the Oregon side.

A. Yes, some distance I think there was a fair road at that time.

Q. Well, the old wagon road came down there under the bluff, right along under the bluff down to The Dalles?

A. Yes, between the portage road and the bluff.

Q. Yes, between the portage road, between where the railroad now runs and the bluff.

A. Yes, and also where the old portage runs.

Q. Now, did you go along up that road?

A. That is my remembrance.

Q. Now, as a matter of fact, Mr. McNary, the road runs back here a mile or more from this point, does it not?

A. It would be, I should say, perhaps more than a mile.

Q. And right at the crossing of Three Mile, that road crosses Three Mile below the bluff there, doesn't it?

A. Yes.

Q. Now, right at the crossing of Three Mile, there is a nice little grassy plain there, isn't there?

A. A little flat.

Q. And that is where the Indians used to camp, as a matter of fact, isn't it?

A. Well, I think that that was a favorite place. But I think that further on they used to camp out even on the rocks there
313 where there was maybe sand that had drifted on to the rocks, out along the base of this point.

Q. Now, isn't it a matter of fact that all that point there for a quarter of a mile back, or more, is covered with uneven solid rock?

A. I think even farther than that.

Q. Yes, even farther than that.

A. I should say half a mile.

Q. Where a man could not possibly make a bed to save his life, could he?

A. No; no.

Q. Now, isn't it a fact that the Indians always when they camped in that vicinity anywheres, camped back where the road crossed Three Mile, in that nice little basin, nice little grassy basin by the little creek?

A. As I said, I think that was a favorite place for them. But back here also, Judge, there was sand and I think some little brush, resembling buck-brush grew; farther on beyond the Three Mile Creek, where I have seen the Indians camped.

Q. That was more than a mile back from this point, wasn't it, where that little buck-brush was?

A. Yes, it would be, I should say, about a mile.

Q. And only a little ways from this little grassy place?

A. Not very far.

Q. So that either there or in the vicinity, very close to the running water, was where they camped?

A. I think where the most of them camped at any rate.

Q. Now, you say that in the last three or four years that you lived over there, you used to ride around with your father and after the cows, over that stretch of country?

A. Yes.

Q. Was your land fenced?

314 A. There was a fence between our land and the Connell place which ran down toward The Dalles, and also to the east of the fisheries, the fence was built up of rocks almost altogether. The bluffs would serve for fences a great part of the distance, and then when there was an opening it would be crossed with a rock fence. That two thousand or so acres that my father occupied was under fence, yes.

Q. Now, whereabouts was the line of your fence, whether it was on your own land or whether it included the 2000 acres—whereabouts was the line of the fence between you and the Connell place?

A. I am not certain, Judge, whether it was east or west of the Little Eddy or the point opposite what is termed Lone Tree Point; but my remembrance would be—I never—it has been, of course, 30 odd years, and my remembrance would be that that line was either a short distance on this side of the Little Eddy, or a short distance on the other side. The fence ran off across here.

Q. Now, isn't it a fact, Mr. McNary, that along by that fence there are some little lakes or duck ponds where they used to shoot ducks?

A. Not in my day, Judge; but there are some little ponds in there. There will be a depression between the rocks and it fills with water in the winter time.

Q. Well, now, wasn't there down here, now, close to that fence, wasn't there a big spring, big living spring, the waters of which—before the railroad was built, not now, but before the railroad was built—the waters of which ran down and made a lake of an acre or such a matter there in the grassy slope, surrounded by a grassy slope on all sides. I am not meaning this long slough. There is a long slough runs up there, isn't there?

A. Yes.

Q. I am not meaning the long slough, but northwest of that long slough.

315 A. I think there was a lake in there; as I remember it from boyhood it seemed to me to be more than an acre.

Q. Maybe it was more than an acre.

A. But making allowance for my youthful remembrance, I would say it was not an acre now.

Q. But as a matter of fact, didn't the fence between you and the Connell place, the line of the Connell place, come down just by the side of that lake close by?

A. I cannot remember as to that, Judge. I cannot remember as to whether that line fence was to the east or the west of the Little Eddy. But even so, I have been all over this land just the same on the pony, the Connell land. Our riding was not confined to our own premises.

Q. Not entirely; but mostly you were riding on your own premises?

A. Yes, ordinarily.

Q. And occasionally you would get across on to the Connell place?

A. Oh, yes, our cattle would get across into Connell's place; we would go around there.

Q. You would have to go after them. I know something about what that is myself. Then your place extended over, or did it take in the shore back of the whole Big Eddy?

A. The rock fence which was built to confine the stock on the east of our place was a considerable distance east of the Big Eddy, as I remember it. There might possibly have been an intervening fence there, fencing off a part of the pasture, but it ran away to the east up beyond the present station of Speedus on the road there. That is a mile above the Big Eddy.

Q. More than a mile, isn't it?

A. It is more than a mile.

316 Q. Now, these landing places where you used to gather driftwood were up here on the Big Eddy, weren't they?

A. Yes, sir.

Q. You could not see from those landing places across here to any of these points on this side, could you?

A. Oh, no. No, no; that is low in there.

Q. Yes. Now, Colwash and his Indians lived about a mile and three quarters from the upper end of the Big Eddy, farther up, didn't they?

A. I don't think it is that far from the upper end of the Big Eddy. It would be over a mile, yes.

Q. Well, wasn't there a village up at the upper end of Five Mile? This is Five Mile Rapids, isn't it?

A. Yes.

Q. Wasn't there a village up at the upper end of Five Mile Rapids?

A. Just about at the upper end was where the most of them lived. Of course that is not five miles—I think Five Mile Rapids is only a little over three miles from The Dalles.

Q. Well, do you say this is only a little over three miles from The Dalles?

A. It is about four to the Five Mile Rapids from The Dalles.

Q. Isn't this three miles from The Dalles.

A. That is scarcely two.

Q. What say?

A. The Little Eddy is not more than two miles from The Dalles.

Q. Well, then, Three Mile Rapids is not three miles from The Dalles, anyway?

A. No. It can't be.

Q. Isn't that the way they came to call it Three Mile Rapids, because it is supposed to be three miles from The Dalles?

Court: I think that question could be fixed by measurement.

317 Mr. Bennett: I think it can, your Honor.

Q. Anyway, the village of these Colwash Indians was up here at the head of Five Mile Rapids?

A. Yes.

Q. What is called Five Mile Rapids, whether it is five miles or not,

A. Right at the present location of the station of Speedus on the North Bank.

Q. Yes. Now, then, there was right below that village a rocky flat with lots of channels of water running through, wasn't there?

A. Yes.

Q. Where the Indians fished?

A. Yes, that was one of their——

Court: What is the name of that village?

Mr. Bennett: That is Wish-ham, your Honor. The village of Wish-ham.

Q. Now, there was not any village from there on down to Rockland, was there?

A. Indian village?

Q. Indian village.

A. No. As I say, I think they used to come in here, Judge, and camp along in between the Big Eddy and the Little Eddy.

Q. In that grassy slope where that lake was, I am speaking about.

A. Yes, in that vicinity. They used to—I think that was usually some of the Yakimas when they would come in.

Q. Now, when the Yakima Indians came down, how would they come?

A. They usually came right down through our place from a point on the Goldendale road about a mile beyond the Gilmore place, if you remember that.

Q. Yes, I remember.

A. There was a gate there. They went right down through our place direct to the Big Eddy. There is a canyon that ran right into the Big Eddy.

Q. They would camp there in that canyon, would they?

318 A. Oftentimes.

Q. Now, then, what I meant, though, particularly was how they came, as to whether they came on foot.

A. Horseback.

Q. Or on horseback.

A. They always came on horseback.

Q. Then, of course, they didn't bring any boats with them?

A. No.

Q. And if they used any boats at all they would have to borrow them?

A. Yes.

Q. Or build them?

A. Or build them.

Q. Yes. Now, then, as I understand you, you don't claim that you ever saw an Indian cross the river anywheres along here?

A. I said that I didn't remember of ever having seen an Indian go out from the Big Eddy and land on the Oregon side, but that I have seen them on the river there at many times.

Q. Yes, the Indians, this Big Eddy was used considerably with their boats.

A. Yes.

Q. And you think they could have gone down here and landed on the Oregon shore?

A. No, I don't believe directly opposite, Judge. My remembrance is that they went below a ways before there was a rock beach to be found.

Q. Before they could have found any landing place?

A. Yes.

Q. Now, let me refresh your memory, Mr. McNary. Do you know where the present mouth of the Government canal is?

A. Yes, I was there last May when it was opened.

Q. Now, then, before that Government canal was blasted out, right there by that place wasn't there a beach and a nice gentle slope up here on to the hill?

319 A. Do I understand that this is about the foot of the canal at the present time.

Q. That is as I understand it. This is about the mouth of the canal here. This is Five Mile Creek, and here is where Mr. Seufert's cannery is, and here is about the mouth of the canal.

A. There might have been—there might have been a sand beach at that point. Although for the moment—of course, there is not now, I don't think, and it had left my memory, but it is very likely that there was one there.

Q. Now, you say that sometimes these Yakima Indians—oh, I want to ask you this question, by the way. Where was your house? Where was the house where you lived?

A. The house was about a mile and a half from the Big Eddy in a northwesterly direction.

Q. In a northwesterly direction?

A. Yes.

Q. Out here somewhere?

A. No, it would be north. It would be north possibly a little east. I would locate the house in that direction, because it was about a mile or a mile and a quarter from the Indian camping grounds, perhaps an equal distance between the Big Eddy and the Indian Camping grounds to the north.

Q. Was it nearer to The Dalles than the Gilmore place, or farther away?

A. It was farther. It is about a mile and a quarter or a mile and a half beyond the Gilmore place from The Dalles.

Q. Towards Goldendale?

A. Towards Goldendale.

Q. And about a mile and a half back from the river?

A. Yes.

Q. You couldn't see the river from your house, could you?

A. At high water we could see stretches of it from the bluffs back of our house.

Q. Well, but from the house itself?

A. No, there never was a time, I don't think, when you could see the surface of the water from there.

320 Q. And from the bluff back of your house, what parts of the river could you see?

A. There were stretches along, I think, below the Big Eddy where you could get a line perhaps where there was 200 yards.

Q. The Big Eddy?

A. Yes. If my remembrance serves me, I think there were stretches of the river in perhaps at this location between the Big Eddy and the Little Eddy; at high water, though, of course, Judge. At low water those banks were high there.

Q. I don't care much about it, but as a matter of fact, isn't the bank so high that it hides the river all along there entirely that you cannot see the river until you get within two or three hundred yards of it?

A. Yes, in walking down there. I may be mistaken about seeing the surface of the river between those two points. But above the Big Eddy, above the Five Mile Rapids we could see the surface from the bluffs there I do know.

Q. Now, then, from the road itself, your house up here, you went down here and there was a ferry across to The Dalles, was there?

A. Yes.

Q. And sometimes you would see those Yakima Indians going down that way towards The Dalles with their horses?

A. Yes.

Q. Now, as I understand you, you cannot say that you ever saw an Indian fishing on the Oregon side.

A. I cannot say that I ever saw one fishing with dip net, using a dip net, on the Oregon side.

Q. Well, did you ever see an Indian fishing in any way on the Oregon side?

A. No. No, that was the only way they did fish in those times excepting to spear them.

Q. You didn't hear of any Indians or know of any Indians fishing with a fish wheel in those days?

321 A. No, I don't believe that up to 1876 there were any fish wheels. If I remember rightly, there was some sort of a fishery on an island above the Big Eddy there. There was a warehouse—there was a fishery or a building there where fish was stored.

A. A kind of a saltery?

A. Yes, I think so. In 1876 I remember seeing it when the high water was dashing up against it then.

Q. You understood that belonged to a white man?

A. Yes.

Q. Oh, did you know any Wasco Indians?

A. Well, yes, I met numbers of them around the streets of The Dalles there, of course. But I don't know that I can remember the names of any of them, Judge.

Q. There is none of them that you knew well enough so that you can remember their names?

A. No, I don't recall any one now by name.

Q. That rapids out there that I have called your attention to above the Big Eddy, that was what you knew as Tumwater?

A. Yes.

Q. That was called Lower Tumwater. wasn't it?

A. Yes, and the Indians were called Tumwaters, and that was sort of known as Tumwater. It may have been a very local appellation then.

Q. The other rapids further above was known as Upper Tumwater wasn't it?

A. Yes.

Redirect examination:

Q. Did you ever see those Tumwater Indians cross over, Mr. McNary?

A. Cross over?

Q. Cross over the river at the Oregon side?

322 A. Well, of course, I was referring in my testimony a while ago to both the Yakimas and the local Tumwater Indians as never having—as not remembering of ever having seen one of them land on the Oregon side, although I have stated there was no reason why they could not.

Q. Did the Tumwaters have canoes?

A. Oh, yes.

Q. These Indians that you spoke of having seen camped back of Location 6, where were you when you observed them?

A. On the bluffs on the opposite side mostly, although as I said, in answer to Judge Bennett's question, I have seen them also on the road above The Dalles.

Q. From which side did you most frequently see them?

A. From the Washington side.

Q. Why?

A. Well, because I frequented the river there continually, the banks of it.

Q. Now, you spoke also of the Indians leaving the two beaches in Big Eddy and coming out this way. Could they have landed at any point from this long point that runs out into the river clear down to the eddy, the Little Eddy on that side?

A. There would be very few landing places between those two points. Of course in low water they could go along down there and catch on to a rock anywhere and land; but not in high water.

Q. What is the character of those cliffs? of that shore all down through there?

A. Quite precipitous and high.

Examination by the Court:

Q. Mr. McNary, take the water in the stream from Big Eddy down to Little Eddy, is it swift or is it placid water?

A. In low water, it is quite placid. There is no reason why the frailest kind of a canoe couldn't get down there excepting when the water is above low water.

323 Q. Are there any eddies there or whirlpools in the water?
A. Yes, there are; naturally in those rocks there will be such places, but it is not rapid nor anything of a dangerous nature. Perhaps the canoe would have to be guided accordingly, but there would be nothing to prevent it from going down there any place.

Q. The Indians could navigate their canoes safely anywhere from Big Eddy down to Little Eddy?

A. They could.

A. In low water?

A. They could.

Q. I suppose as the water got higher it would become more dangerous?

A. There is such a volume, it would have to go through a narrow channel, it would be very rapid.

Recross examination:

Q. The fishing season is after the water gets up, isn't it?

A. Oh, yes, yes. Of course, they could do that navigating when the water was above low. when it was an a number of feet perhaps. But in the midst of the fishing season, when the water is the highest, it would not be safe for them to take canoes down through there.

Court: That would be when the water got over the rocks there out opposite Little Eddy?

A. Oh, yes. I should say that when the water got over that point there that then it would be too rapid for them to handle their canoes.

Court: At that time, of course, they could not fish off those rocks at all?

A. No. They would cross over, I think, usually before the high water came on and camp on the opposite side.

Court: Would they remain there till the water went down before going back?

A. Yes. Usually they would stay over there until the fishing season was over.

Excused.

324 JOHN Y. TODD, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Mr. Todd?

A. Well, I suppose I am a member of the Soldier's Home at Roseburg, at present.

Q. When were you born?

A. I was born in October, 1830.

Q. Where was that?

A. Missouri.

Q. When did you come to Oregon?

A. I came to Oregon in 1851 from California, on the steamer; crossed the plains into California in 1850.

Q. Where did you go when you came to Oregon?

A. I went into Yamhill county first, there is a place called Newberg now, on the Willamette river.

Q. And where did you go from Newberg?

A. Well, I went all over—went up there. The next place I done business was in Lafayette, only a few miles.

Court: Take him to this point.

Q. When did you go to The Dalles?

A. I was first at The Dalles in 1852.

Q. How long did you stay there?

A. I didn't stay there very long then. I only stayed at The Dalles about a week. But I was up trading with the emigrants above there coming down to The Dalles.

Q. When did you leave the vicinity of The Dalles country?

A. I ain't only left there—

Q. When you first went there, Mr. Todd, in 1852, how long did you stay around the vicinity of The Dalles country?

A. In 1852?

325 Q. Yes.

A. Well, let's see. I stayed there till about—Oh, I didn't stay that time any time at all hardly. I only stayed a few days at The Dalles and went back to the Willamette Valley.

Q. When did you go to The Dalles again?

A. I went back in 1856.

Q. How long did you stay there then?

A. I stayed there—let's see—well, I didn't live in The Dalles. I lived out on a ranch. I stayed there about from 1856, I think I moved to Tygh Valley in 1858.

Q. What was your business?

A. I was in the cattle business.

Q. Where did you stay when you went to The Dalles on these different occasions?

A. When I went to The Dalles?

Q. Yes. I don't mean to the city of The Dalles, but I mean in this country up here above The Dalles.

A. Where did I stay?

Q. Yes.

A. Well, I stayed on a ranch; frequently in a camp, with cattle.

Q. Where did you camp?

A. Well, the first ranch I had was up there by Celilo.

Q. I am speaking of when you camped, now, Mr. Todd. Where did you camp?

A. Well, that was nothing but a camp. I built cattle corrals, and we would stretch a tent, you know. Then I made a farm right there and lived.

Q. Did you camp anywhere below there, further down the river?

A. Yes, when I first went to the country I camped.

Q. Where was that?

A. That was where Five and Eight Miles comes in there together.

Q. Into the Columbia river?

A. Into the Columbia river. That is where I camped when
326 I first went there.

Court: That was from 1853 to 1856?

A. No. I went there in 1852, you know, and then I went away again.

Court: Then you went back in 1856?

A. Then I went back in 1856 just after the Indian war.

Court: How long did you remain there?

A. Oh, I stayed there then two years. Then I went to Celilo.

Q. Then have you been acquainted with The Dalles country here?

A. I was till about 35 years ago. I was well acquainted with it.

Q. Have you seen the Indians fishing along in there or not?

A. Yes, sir. I saw them fish.

Q. Are you acquainted with Three Mile Rapids?

A. Well, I suppose I am, what you call Three Mile Rapids. There is where I first camped when I went there the first time, right there.

Q. I am referring now to the first rapids after you leave The Dalles going up the river.

A. After you cross Three Mile creek?

Q. I suppose it is. I don't know where Three Mile Creek is.

A. Three Mile Creek comes into the first water above The Dalles.

Q. Have you seen Indians fishing there?

A. Yes.

Q. Where did they come from, do you know, Mr. Todd?

A. It is hard to tell. Some come from one place, some another.

Q. To the best of your knowledge?

A. They were mostly what is termed now the Warm Spring Indians, I think.

Q. Were there any others?

A. Yes, I have seen others there.

Q. Did you ever see any come from the north side?

A. Yes, I saw some. They said they belonged over there.

Q. These Indians said that?

A. Yes, sir.

327 Q. Did you ever see any Indians crossing the Columbia river?

A. Yes, I crossed with them in a canoe.

Q. You have crossed with them?

A. Yes.

Q. Where did you cross with them, Mr. Todd?

A. I crossed at what we call now the Big Eddy. We just called it the fishery then.

Q. From the Big Eddy where did you cross to on the Oregon side?

A. I crossed from the Washington side to the Oregon side and then back again the same day. Went over to inquire about a horse.

Q. Who took you over?

A. A couple of Indians. That is all I could tell you. But I think they were Warm Spring Indians, I took them to be.

Q. Where did you leave from on the Oregon side?

A. On the Oregon side?

Q. Yes. When you left the Oregon side to go over to Big Eddy?

A. I left pretty well at the lower end of that butte there, just above what you call Five Mile Rapids, I guess—where Five Mile empties, you know.

Q. Five Mile Creek?

A. Yes, Five Mile creek.

Q. Just above Five Mile?

A. Yes, just above that on the Oregon side, they took me over.

Q. Do you know what the relation of the Indians on either side of the river was with each other?

A. Do you mean for friendship?

Q. Yes.

A. I know of no trouble at all. If there was any trouble, I didn't know of it.

Q. Did you ever see any Indians, any other Indians from out in the Simcoe country?

A. Yes.

Q. How did you know that?

328 A. Well, I would ask them where their country was, and they would answer me Simcoe, you know. That is about all I know. I would see they were strange Indians; a few times asked them—Yakimas, Klickitats and so on.

Cross-examination.

Questions by Mr. Bennett:

— Mr. Todd, you say you crossed the plains in 1852?

A. I crossed into California in 1852. No, no, in 1850 I crossed into California; and then I came and landed here in Portland the 12th day of July, 1851.

Q. Well, this time that you were in The Dalles in 1852, did you go up from Portland?

A. No, I came from the Willamette over the Barlow road and went up by way of the John Day, on the emigrant road, trading with the emigrants. Then I came back and come down and camped right here what you call, I guess, Five Mile Rapids, you know.

Q. Five Mile Rapids?

A. Yes. Well, we didn't call it that then, but that is the place from the way I understand.

Q. That was up there by Seufert's cannery, where Seufert's cannery now is?

A. I don't know where his cannery is. I ain't been there for 35 years.

Q. Then you camped there a few days, as I understand you?

A. Just a few days, and went back over the Barlow back into the Willamette.

Q. And then you were not up there any more till 1856?

A. That is right.

Q. Then in 1856, as I understand you, you went up to Celilo, and you had a ranch there?

A. Yes, 1856. I was there in the Yakima country through the Yakima war. When we was mustered out, I went up then
329 and went there, I come right across the mountain, I had cattle on the Willamette, and I crossed the mountain and came over the same summer; and well I just went up there and built some corrals, you know, and called it my ranch, you know, and we camped, you know.

Q. How far was your ranch from Celilo?

A. From Celilo?

Q. Was it right at Celilo or back in the hills?

A. No. The camp was down there where the creek empties in, if you know where that is.

Q. Where?

A. Where this Five Mile Creek came into the Columbia.

Q. But your ranch was down on Five Mile, was it?

A. That is where I camped in 1856. No, in 1852, that is where I camped. Then when I camped there, it was up at Celilo, was where the next camp was in 1856.

Q. Now, that is what I am trying to get at, Mr. Todd. When you came back there in 1856 you made a kind of ranch up there by Celilo, did you?

A. Yes.

Q. Now, was that right at Celilo or back on the hills?

A. It was over on the Ten Mile Creek. We called it a mile and a half from Celilo.

Q. It was not on the river then?

A. No.

Q. It was over on Ten Mile Creek?

A. It was over on Ten Mile Creek, a mile and a half from there.

Q. You kept your ranch there on Ten Mile Creek a mile and a half from the river, you kept that about two years, did you?

A. Yes, about two years.

Q. Then where did you go?

Q. Then I went from that to Tygh Valley.

Q. From there to Tygh Valley?

330 A. Yes. But I still had stock there another year running loose. I spent about as much time there as I did anywhere else. I sold the ranch to Nathan Lyle.

Q. Then you gathered up your stock and took them to Tygh Valley?

A. Yes.

Q. That was about 30 miles in the interior, was it?

A. Yes.

Q. How long did you live at Tygh Valley?

A. I think I lived there eight years.

Q. Then where did you go?

A. Then I moved south to Oak Grove.

Q. That was about fifteen miles further in the interior?

A. About 12, I think.

Q. How long did you live there?

Court: I don't see any use following that up.

Mr. Bennett: I simply wanted to show he was not in the vicinity.

Court: He has already said he wasn't there only the two years, and part of the time the third year, when he kept his stock there a little while. I don't think it is necessary to follow that up with this witness.

Mr. Rankin: He has told about the particular times he has been there. I don't think it is necessary to show the times he has not been there.

Mr. Bennett: Of course, if it is understood his knowledge is limited to that time, that is all satisfactory.

Court: Yes, I understand that.

Q. Now, this time, when you crossed the river with the Indians and saw them cross, as I understand you, you crossed up above the Five Mile Rapids?

A. Yes.

Q. Up in the still water there?

A. Yes.

331 Q. Up there opposite where the Indian village was?

A. Well, there wasn't no Indian village there. There was Indian camps along on both sides of the river, and I went over from my ranches, over the hill, then I was at Celilo, then I went down a little ways—I wanted to cross over and see some Indians.

I found some Indians, they had commenced loading salmon in a canoe, and I asked them if they wouldn't take me over the river, and they said yes. They took and laid some salmon out on the rocks, and took me across to some Indians on the other side.

Q. There was an Indian village on the other side?

A. I don't know as you would call it a village. There were Indians camped along there fishing. A few—there wasn't a great many.

Q. You don't remember any particular place on the Oregon side where you saw any Indians fishing?

A. Yes, I do.

Q. Where was it?

A. Fishing all the way along from the—even from The Dalles right on up to Celilo.

Q. Were they fishing right close to The Dalles?

A. Not very far from The Dalles.

Q. How close?

A. I think within less than a mile I saw Indians fish.

Q. Within less than a mile?

A. Yes, up in that salmon country up there. That was not one of the main fisheries, but there was Indians fished there. I have seen them do it.

Q. The main fishery was up at Celilo, wasn't it?

A. Well, the main fishery, yes, Celilo and this here Big Eddy. The main fishery I suppose was in the big eddies, where they done the most of the fishing. I have seen more canoes and more Indians there than I could see anywheres else.

332 Q. Round the Big Eddy than anywheres else?

A. Yes.

Q. And round Celilo?

A. Yes.

Q. They were also fishing at this place where you crossed the river up above the Rapids?

A. I didn't cross the river above the Rapids. I crossed the river below the rapids.

Mr. Rankin: He has not said that.

A. I crossed below the rapids.

Q. Below the Five Mile Rapids?

A. No, not below the Five Mile Rapids; below the Celilo Rapids.

Court: He says he started from this side of the river above Five Mile and went out through Big Eddy and landed on the other side from Big Eddy.

Mr. Rankin: Five Mile Creek, your Honor.

A. Yes. And then when they took me back they took me kind of angling through the Big Eddy this way up the river, and then they took me across and let me out, and I went afoot over home to the ranch.

Q. Well, do you know where the rapids known as the Five Mile Rapids was?

A. Well, I don't know that I do. I think I do, I think right

there is where I camped the first time I went over there; but it didn't have that name then, you know.

Redirect examination:

Q. The second time you crossed over you crossed at another place, did you, Mr. Todd?

A. I only crossed once. I crossed over and back.

Q. Now, when you crossed back——

A. Yes, when I crossed back I crossed above. We started from near the rapids down there, and went kind of angling across up the river, you know, and then they sent me, you might say, square across. I would be near my home, you know. Landed me, 333 and I got out, and footed it over home, over to my corral.

Q. Whereabouts on the Oregon shore did you land when you crossed back?

A. Right just below the Celilo Rapids there. Then we only called it a mile and a half over to my corral.

(Recross:)

Q. Did you go back in the same boat you went over in?

A. Yes, the same two Indians took me back.

Excused.

J. C. LUCKY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination:

Questions by Mr. Rankin:

Q. Where do you live, Mr. Lucky?

A. I live on the Heights, 506 Elm street.

Q. Here in Portland, Oregon?

A. Yes, sir.

Q. Where were you born?

A. Iowa.

Q. When?

A. 1842.

Q. When did you come west?

A. We came west in 1850.

Q. And where did you come to in Oregon?

A. Why, Parkersville, near Salem.

Q. When did you go to The Dalles or in that neighborhood?

A. 1867.

Q. Have you ever been connected with the Government service of the Indians in any way?

A. Well, I was agent there four years under Harrison.

Q. Where?

A. At the Warm Springs.

Q. Any other connection with the Government?

A. Well, I was there as an apprentice. I was there as an employe three years.

334 Q. When was that?

A. From 1867 for three years.

Q. Were you connected with it in any other way?

A. No, sir.

Q. With the Government service?

A. No, sir; just an employe.

Q. Was that the entire span of your service?

A. Well, then I went back again after that. I think it was a little later than that. I went away, and was gone about two years, and I came back. I can't recall just exactly the date. But then I was there again for about two years more.

Q. That was at Warm Spring?

A. Yes, at Warm Spring.

Q. Do you know where Three Mile Rapids is on the Columbia river?

A. Well, I think I do. I am pretty certain I do.

Q. Where is it?

A. It is above The Dalles about three miles. Yes, about three miles above The Dalles. It is hardly that, I don't think.

Q. Did you ever go there yourself?

A. Yes, I was there and fished one time.

Q. When was that?

A. That was in 1867.

Q. Did you see any Indians fishing there at that time?

A. Oh, yes.

Q. Tell the court the circumstances of your going there and what happened.

A. Well, I just thought I would go up and see them fish, so I went up there.

Court: That is 1867, you say?

A. Yes, sir. I borrowed a hook from Ticiuxpt, an old Indian. He was an old Indian—everybody knows him. He is dead now. But I borrowed a hook off him. He was about the first Indian I had seen when I got up there. I hooked out two fish, and broke
335 his hook. I went down to The Dalles with him—just a short distance—I walked down and got him a new hook and gave it to him.

Q. Did you see other Indians fishing there at the time?

A. Oh, yes. There was quite a number fishing, but I didn't know them. You see that was the first year I was living there. I came up there—I was waiting there to go out to the Agency.

Q. Where did these other Indians come from, if you know?

A. Well, I couldn't tell you. I wasn't acquainted with any Indians then. But I knew this old man—he was at the agency afterwards, and I knew he was the man I got the hook from. But I was not acquainted with any of the Indians then.

Q. Do you know what the relation was between the Indians of the north country, the Washington side, and those of the south country?

A. Well, after I got acquainted with them, they were all out there, and they were friendly as far as I know.

Q. You speak of when you got acquainted with them. When was that?

A. 1867, when I went out there that year.

Q. From that time on?

A. Yes, right on up.

Q. How long does your knowledge of the relationship continue after 1867?

A. Well, three or four years—three years anyway I knew them.

Q. Did you also know of their relations after you went upon the Warm Spring Reservation, or not?

A. Yes, I knew the Mark family, married some of the Yakimas, they were intermarried and friendly, as far as I know. There was no friction at all among them.

Q. Was the Mark family a Wasco family?

A. Wasco family. He was a chief. They lived there always—they went over there—I guess it was a better reservation—they went over there and took land, and married over there, and stayed there.

336 Q. During your administration on the Warm Spring Reservation, did you ever find Yakimas visiting at the Warm Spring?

A. Oh, sure.

Q. Do you recall any of them that did?

A. Oh, Waters came over there and preached for them. He was a Yakima. There was Fourth of July, we had a good many Yakima Indians over there.

Q. And each time you speak of, were the relations always friendly?

A. Friendly as far as I know; I never heard any friction acknowledged.

Q. You would have been apt to have heard of it if there had been?

A. I certainly would have known something about it.

Q. Have you ever at any subsequent dates to 1867 seen Yakimas on the south side of the river? That is, to get the fishing site?

A. Prior to 1867?

Q. No, after; subsequent.

A. No. No, I never was on the ground any more after that that I know of. I have been up and down the railroad on the portage road several times and have seen them fishing, but I never was all the way down only that one time at Three Mile. But I have been along the railroad and seen the Indians fishing there.

Q. What would you say as to the importance of this fishery for the Indians?

A. What?

Q. What would you say as to the importance of fish as food for the Indians?

Objected to.

Court: I think that will be conceded.

Mr. Rankin: Is it so understood? It is conceded as an important food for them?

Mr. Bennett: Well, we concede that they use it and like it and eat it. But I would not concede it was a good thing for them to have fishing privilege. I think it is rather a bad thing.

337 Mr. Rankin: I am speaking of their food.

Mr. Bennett: It is important in one sense.

Court: I think the court could almost take judicial knowledge of that fact. I don't think I will hear any discussion of that.

Mr. Rankin: All right. You may cross examine.

Cross-examination.

Questions by Mr. Bennett:

Mr. Lucky, the only time that you claim to have been anywhere around where the Indians were fishing was in 1867?

A. Yes, sir.

Q. One time?

A. Yes.

Q. And do you remember what kind of a place this was?

A. Yes.

Q. Where you were fishing?

A. Yes, sir; a rock—rocks, nothing but rocks. And there were rapids there. And the fish were just as thick as they could be. I hooked out two fish without ever seeing them—just hooked them out. There was nothing but rocks all around on the banks. No soil there at all; not a particle of soil. It was just rocks.

Q. Was there a fall there?

A. Oh, yes, quite a rapids there.

Q. How far did the river fall?

A. Oh, I couldn't say now. It has been a long time ago.

Q. Four or five feet?

A. No, I don't think so. Not more than that anyway.

Q. What say?

A. I don't think that much.

Q. You would think there was a perpendicular fall of four or five feet?

Mr. Rankin: He hasn't said that.

338 A. I couldn't say. It is a long time since 1867. I couldn't remember, just there one time, whether it was five feet or two feet or what it was, but I know there was plenty of fish there.

Q. You know there was some perpendicular fall there?

A. Very short fall there.

Q. But whether it was two or four or five feet you could not tell?

A. No, because it has been so long ago. I wasn't paying any attention to the fall. I was trying to catch fish.

Q. Did you go up along the road when you went up there?

A. There was no road at all. We just went right straight through

to where there was fishing. It is about three miles up there—hardly that, I don't think. It is this side of Five Mile anyhow. I walked down to The Dalles, and the Indian walked down with me. He was lame.

Q. You say there was no trail or road at all?

A. There might have been a trail. There was no road.

Q. Wasn't there a wagon road?

A. No. You couldn't get through for the rocks.

Q. Didn't the old emigrant road go through there?

A. There was outside, but you couldn't get along there—it would break it all to pieces.

Q. There was a wagon road went up close by?

A. Yes, close by.

Q. Did you go up that wagon road?

A. No. I just went straight up the river with the Indians.

Q. You went along up the river?

A. Yes. The wagon road was too far out. I didn't want to go out there. I had taken the wagon road down to the reservation.

Q. Did you cross any streams as you went up?

A. No, no streams.

Q. None at all?

A. None at all.

Q. Didn't cross any sloughs or anything of that kind?

A. No, we dodged around sloughs.

339 Q. What say?

A. We had to go around through the rocks and get by there. I had no trouble to get there. It wasn't very far.

Q. What time of the year was it?

A. It was—I don't remember now—I think in the spring.

Q. What say?

A. I think it was in the spring of the year. The water was up pretty well.

Q. The water was up pretty well, was it?

A. Yes.

Q. The water was pretty high?

A. Tolerably high. It wasn't so high but what it got around among these rocks—the water was round among these rocks. There was plenty of fish there.

Q. It wasn't at the highest stage, but it was pretty high?

A. Yes.

Redirect examination:

Q. Did you see other Indians fishing in there?

Objected to as leading.

Court: You may answer that question.

A. Oh, yes, there were other Indians fishing there. I didn't know any of them.

Q. How were they fishing there?

A. They were fishing with these hooks and a pole. There was a socket made on the end of the hook with horn, bone or deer horn,

then they had ropes to that. Then they would put the hook on the pole, and tighten it up so it wouldn't come off. Then it would hook into the salmon.

Court: I don't think you need go into that.

A. They didn't have any spears at all that day. They used hooks altogether.

Q. Did they use anything else besides the hooks?

A. No.

Court: How long were you agent on the Warm Spring Reservation?

340 A. I was there four years; a little over four years—1890 to 1894.

Court: Was Jason Wheeler there before or after you?

A. Yes, Jason Wheeler was there before I was.

Redirect examination, continued:

Q. Do you know when the Indians were moved from the river up to the Warm Spring? What year?

A. No, I couldn't tell you. I once knew, but I have forgotten. It must be about 1865, I think. I think Captain Smith went out there in 1865. Brother John was lost, you know, but I think Captain Smith went out in 1865. Captain Logan was lost on the Rogue river.

Q. How long was it before Captain Logan was lost, that the Indians were moved up there?

A. They were moved up there—they were there when he was drowned.

Q. Yes, but how long before?

A. I couldn't tell you about that.

Q. What is the best of your knowledge on that?

A. That is ahead of my knowledge, I couldn't tell you about that.

LORENS P. JENSEN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Where do you live, Mr. Jensen?

A. I have been living lately at Pullman; Washington.

Q. Where did you live prior to that?

A. At Yakima, near Toppenish.

Q. Where prior to that?

A. At a place called Rockland in Washington, outside The Dalles.

Q. That is now known as Grand Dalles?

A. Yes.

Q. How long did you live at the Grand Dalles?

A. I lived there from the winter of 1874-5 to 1898.

Q. '74 and '5?

A. Till in August, 1898.

Q. 1898: What was your business there?

A. Ferryman.

Q. Were you ferryman during the entire time?

A. Yes, practically the entire time.

Q. What else did you have?

A. Well, that was for some short time. I had a ranch up on the Washington side, about from the Columbia river, from just above the narrows up, running up towards Celilo.

Q. How far—how much of the river did that ranch face upon?

A. Three miles.

Q. Where are the narrows that you speak of? Do you recognize that map, Mr. Jensen, this upper one here. I call your attention to The Dalles, marked at this corner, and Rockland across.

A. Over here, yes.

Q. And this is north, as you see by the arrow.

A. Yes. Yes, this is Three Mile.

Q. Three Mile Rapids you recognize?

A. Yes.

Q. Here is Five Mile Creek coming in.

A. Yes, there is Big Eddy. There is the narrows, running up to the head of the narrows, and the mess house. The O. S. N. Company's mess house is on the Oregon side just right above the head of the narrows.

Q. And is here called Five Mile here on the map known as the narrows?

A. Well, the narrows begins right at the Big Eddy here and follows up to right above where the Indians were camped here on the Washington side. I don't know just that we can see that particular place here. Five Mile proper comes in down here. There is where Seufert is living.

Q. There is where Seufert is living, down here?

A. Yes.

Q. Now, whereabouts here did your ranch face on the narrows?

A. Well, it is just above the narrows, and from there it reached three miles up to the head of Rapid Island about—that is on the Washington side.

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Q. That is just off the map, then, is it?

A. Yes, that is off the map.

Q. Who is your wife, Mr. Jensen?

A. Her maiden name was Julia Nelson. She died three years ago last Christmas.

Q. And what was her nationality?

A. She was part Indian and part white. Her father was a white man and her mother was an Indian woman.

Q. What tribe was her mother a member of?

A. The Wish-ham tribe.

Q. During your ferrying business at The Dalles, who were your passengers?

A. Well, they were all kinds. And first from '75 to about '78 or

'9 I should judge that about one-third of our business was really Indian business.

Q. And who were those Indians?

A. Well, they were both Klickitats, Yakimas and Warm Springs. In the early spring of the year there was a good deal of fishing was going on, mostly and the people that lived up to Wish-ham would come down and come across—the women would sometimes, and maybe come back with fish.

Q. What did they carry over with them, if anything?

A. Well, in the fall of the year they used to carry huckleberries over.

Q. What else did they carry at any time? What would be their baggage, luggage?

A. Well, hard to tell. They would have packed up horses sometimes. That would generally be along through the summer.

Q. Describe some of the stuff that they took back with them.

A. Well, I could not tell what they might have, you know, when they had it packed on horses. In the spring of the year, the
343 women would sometimes come over. They would make cinches and come over and sell them at The Dalles, for the saddlers, horse cinches.

Q. How about fish?

A. Well, they would sometimes come over early in the spring and bring fish back to the Washington side. Fish was usually caught the earliest over on The Dalles side.

Q. Whereabouts on The Dalles side?

A. Well, they would tell me up around Three Mile; but I was always at the ferry and I could not tell you as to where they caught them.

Q. Where would they take these fish, so far as you knew?

A. Back home to the camp at Wish-ham. That is as far as I knew.

Q. And how about canoes?

A. Well, that would vary. That was mostly in the spring of the year, it would be not more than what the women usually would pack on their heads. You are not accustomed to that here, and their way of packing, like a pack horse, having a bandage around their head and packing them on their back—very good packers.

Q. And they would carry their fish in that way?

A. Yes.

Q. Would the fish be whole?

A. Yes, they would usually be whole when they took them.

Q. Have you seen them carrying them otherwise?

A. Well, not—yes, I have seen them carry them otherwise. I have seen them carry them in the summer time dried, on their horses.

Q. How were the fish packed then, when they were dried?

A. They would be packed in packages, bags that they had on their horses, and they had them lashed on like a pack saddle.

Q. It would not be half a fish?

A. No, it would be pieces of fish, but the piece would be packed

up. You could smell them a great deal better than you could see them.

344 Q. I expect. Now, were your boating activities confined to between The Dalles and Rockland?

A. Yes.

Q. At all times?

A. Well, not quite all times. In the winter time we had to get away from the ice. When the ice wasn't safe we would ferry up here. That is Three Mile, like, at the mouth of Three Mile. Actually that was, well it run down the rocks. Three Mile comes out of a gulch, empties not exactly into the Columbia, but flows on down and into the river, and we laid boats up there.

Q. Are you speaking of Three Mile Rapids or Three Mile Creek?

A. No, that is in below Three Mile Rapids.

Q. Here is Three Mile Rapids.

A. That is right. Well, here is these rocks. We would be up in the bend here. You see we would be on this side.

Q. Let me call your attention here to some lines coming out here and running down. Do you know whether or not there is any channel back of this point?

A. There is when the water is up, yes.

Q. Now, whereabouts with reference to that does Three Mile Creek come in, if you know?

A. Why, right here about (pointing on map). Yes, right here. There is a gully on the road leading up.

Q. Do you recognize Five Mile?

A. Yes, I have been up here. Seufert's place is right in here. He has an orchard right there.

Q. And Three Mile is down where?

A. I should judge somewhere in here.

Q. Just mark it with a "T. M." right in there somewhere.

A. There is a gully that comes out just right about here. It is just here. Now, to be exact I couldn't. If I can locate myself by the contour of the country.

Q. These are sand dunes here?

345 A. Yes, it is above the sand dunes. I would think where Three Mile Creek comes out of the gulch—a man by the name of Bettinger used to own the land on this side of the gulch—together I should judge it was about here.

Q. That is right on the sand dunes there. That is sand there?

A. I would know where it was if I was on the ground. That is sand dunes. This was rather above the sand dunes, the Bettinger land was. This is the place where I first named here.

Q. Here is the railroad track. Do you know where the railroad track comes down?

A. Well, yes, they have built some track since I left there myself, quite a bit of it. The state built the portage road.

Q. Calling attention to this. What is that running down there?

A. Well, this here is all sand back along down here.

Q. What are these lines running down here?

A. I think that is part of that creek that comes out farther up here and finds its way out.

Court: I don't think he can locate it exactly.

Q. Where did you cross the river?

A. Right here.

Q. That is from Rockland to The Dalles?

A. Yes.

Q. Now, when you said the ice interfered, where did you cross?

A. Up above. Wherever we could get across the ice we could cross the river. There was absolutely nothing on that side of the river. They had to come to The Dalles for their supplies. They always took boats up and crossed them here.

Q. Where, with respect to Three Mile Rapids, the head or foot or in between, or where?

A. We went below Three Mile Rapids.

Q. Now, did you ever boat anywhere besides across The Dalles to Rockland and here across below Three Mile Rapids?

A. Oh, I come down that stretch from away above there several times.

Q. From where?

A. When I owned the place

346 Q. Up where your place was?

A. Yes, if the water was low I could come right down.

Q. Come right down where?

A. Down to here, from up there where I owned a ranch.

Q. In a boat?

A. In a boat.

Q. What kind of a boat?

A. Small boat, kind of, sort of skiff like.

Q. Propelled by hand?

A. Yes.

Q. How many times have you come down that way?

A. Oh, a couple of times, and I have gone up there when I had help.

Q. You have gone up there?

A. Yes.

Q. Where did you leave when you went up the stream?

A. Why, I would pull away from here, and I could pull all the way up to the Big Eddy very easy in the fall of the year, up to here; but from here on to the head of the narrows I would have to have somebody help me around some of those points. There is an old Indian—he ain't here—his name is Charley Kattalomitt; he helped me.

Q. Did he help you?

A. Yes.

Q. You went all the way?

A. Yes, all the way.

Q. From The Dalles up to where?

A. Up to above Memaloose Island, about a mile above the head of the narrows.

Q. A mile above the head of the narrows?

A. Yes. I owned a place there on the Washington side. You haven't got it on the map here.

Q. How about going up in a row boat from The Dalles, up through Three Mile to Five Mile or to Big Eddy?

A. In the fall of the year, I should say from August, along in August, late in August to along in March or April we could go up there any time with small boats. That is, we can——

Q. What is the stage of the water when you can get through there?

347 A. I should judge that we could not get through there when it is more than 12 feet or such a matter, 12 or 14 feet above low water.

Q. From that time on—from that stage on down to low water can you get through there?

A. Yes.

Q. How about above 14 feet? ?

A. Well, it would be rough. The water gets swift in the narrows. There is places there that is quite dangerous when the water gets up, and when the water gets up any distance, why, you can't go through there, either a big or a little boat, or any kind of a boat.

Q. You can't go through there?

A. No.

Q. What would you state—you are acquainted with the river all along there, as I understand?

A. Yes.

Q. What would you state about crossing from Big Eddy?

A. Well, you can cross there most any time of year.

Q. Where to?

A. Well, I have crossed there when the water was quite high.

Q. Where from and where to, Mr. Jensen?

A. From over here. The water comes down here and it makes a swirl here. And the fact is, you don't have to take advantage of things. You don't have to work very hard. You can land over in here easy, because there is drift held in here for days and days, that kind of fights its way out, and come down.

Q. Drift wood held in there?

A. Yes.

Q. Now, you leave from a place marked "beach" there, I understand?

A. Yes, there is a beach over there.

Q. Now, where do you go to?

A. O. D. Taylor used to have a place in there, a preacher.

Q. Where did you go to?

A. I have landed over here on the Oregon side; but I have more frequently crossed up above, up above the narrows.

348 Q. I am talking about this place more.

A. I have visited with some men. I have gone along Sundays and visited with men Seufert had employed. I think he had a couple of men there who used to work for my father-in-law, countrymen of mine.

Q. Countrymen of you, yourself?

A. Yes, sir.

Q. You visited his men?

A. Yes.

Q. How about landing from where the river comes out at Big Eddy to the point farthest southeast from there down to Five Mile—any places along there that you can land that you know of?

A. Well, yes, I think—now, let me see. There is a place above Three Mile where you can get over very well. I have an idea that at different stages of the water there is places here where you can go over pretty well most any time, except when it gets high. Now, when the Winans were fishing there, except in right high water they could go over with boats most any time they wanted to.

Q. That is the Winans?

A. Winans Brothers, yes. They had a cable that they crossed the fish over; but they couldn't cross with a small boat carrying any cargo; but they could get over back and forth with a small boat.

Adjourned until 10 A. M.

January 25, 1916.—10 a. m.

LORENS P. JENSEN resumes the stand.

Direct examination continued:

Q. Mr. Jensen, I omitted to ask you—

A. The first time I came to The Dalles was '73. I was one of the first that steamboated on a new boat built there called the "Daisy Angell." That was the first stern wheeler on the Columbia river.

Q. What had been your occupation before coming to The Dalles?

A. I had been working for the old O. S. N. Company on the lower river.

349 Q. What had been your general occupation?

A. Following the sea.

Q. How long had you been a seaman?

A. Well, I left home in 1865 and then I went to sea, deep water, sailed from Kiel and Hamburg, and been around on sailing vessels a good deal.

Q. You testified you had been down to Three Mile Rapids and up from Three Mile Rapids?

A. Yes.

Q. State what year it was you made the first trip through these rapids.

A. Well, the first trip I made, I think, as near as I can recollect, was with M. C. George on a steamboat we had there called the Western Queen.

Q. Tell about that trip.

A. Lieutenant Powell came up—I was running the boat, and Lieutenant Powell had charge of the Government works at the Cascades; and he came up and asked me if he could get the boat. I told him I was running it, but I was under orders; there was a sort of general manager of the company, and he would have to see him.

Q. Who was that general manager?

A. He was my father-in-law.

Q. His name was? ?

A. Peter Nelson. I says, "What is the matter with Humphreys?"
He run the boat, the Government's own boat.

Mr. Bennett: I don't suppose he need tell this talk.

Mr. Rankin: I don't care for the talk. I just want to know about your trip.

A. So he says, I want to prove that you can go up there.

Q. Never mind the talk; just tell what you did about going up there.

A. He went over and saw the general manager and got the consent and I went up. I objected to not having run a boat up
350 there, and I might hit a rock and get in trouble about it.
And he says, don't be alarmed, Captain Coe, who was formerly of the O. S. N. Company, is here, Lawrence Coe, and he will go with you. All right, I says. So we went up there.

Q. Who was the party that went up on the Western Queen?

A. Well, I was running the boat; and Lawrence Coe, and Lieutenant Powell, and M. C. George, and a deck hand that was with me, and the engineer.

Q. What was the deck hand's name?

A. Andrew Larson; engineer, Harry North.

Q. Was that the first time you had been up on a vessel propelled by machinery?

A. Yes.

Q. Now, had you been up or down before in a row boat?

A. Yes, I am quite certain. I know I was several times afterwards; but I am quite certain I was up there in a skiff some time before that?

Q. About what year was that?

A. Well, that must have been—we had a hard winter—I think it must have been in 1880.

Mr. Bennett: That the Hassalo went up?

A. No, the Western Queen.

Mr. Rankin: No, he is speaking now about his row boat.

Mr. Bennett: That is what I wanted to know, whether he was speaking of a row boat or the steamer.

A. I was speaking of the row boat. I think I went up above Three Mile Rapids, up towards the Big Eddy in 1880.

Q. Any time after that?

A. Yes, I went up and down some after that, because I own a place up there and I had business up there at different times and came down that way.

Q. Did you ever cross the river up above the Big Eddy or
351 near your place? ?

A. Yes, I crossed the river at the Big Eddy one time I was up there visiting some countrymen of mine that was working there for Mr. Seufert.

Q. Who were they?

A. Well, they came from Denmark also, and they were working there.

Q. What was their name?

A. I think Olsen was one of their names. He was a Scandinavian anyway. He had been working for my father-in-law also.

Q. Have you ever heard of Wah-sucks?

A. Yes, I have heard of it.

Q. Where was that located?

A. I understand it was up about Three Mile; but then I was not doing much business on the Oregon side. Really, I didn't go up and down there or was around there much except when I was at Seufert's place. I have been there quite a number of times.

Q. From your acquaintanceship with the Indians, what was their relationship?

A. Why, they were going back and forth, friendly always, during my time.

Q. You spoke yesterday about their taking fish back and forth.

A. Yes.

Q. How long did that continue, or did it continue always?

A. No. When I first started ferrying about 1875, from that time up till 1878 or '79 about one-third of our business on the ferry was really Indian business. The Indians would cross a good deal. But when fish began to be commerce, it sort of dropped off, and there wasn't much crossing after that; not in the same way. There was Indians crossing occasionally, but not near so much as there was in the earlier days.

Q. From your knowledge of the Indians, state whether or not you are acquainted with the custom of a family and the children of the family fishing in a place?

352 A. Yes.

Q. What is that custom?

A. That is, if they have a certain place—it would be very hard to describe to you—they have a certain fishing place where they fish; when the fish come, one family seemed to own a particular place, and when the fish come they were the first to catch fish. Now, they get what they want; then others come in in turn.

Q. Others come in in turn?

A. Yes.

Cross-examination.

Questions by Mr. Bennett:

— Mr. Jensen, as I understand you, you don't claim to have ever seen the Indians fishing at this point?

A. No.

Q. At Three Mile Rapids?

A. No, I didn't see them. My business was down here.

Q. What years did you live up on the ranch up above the Big Eddy?

A. Well, my father-in-law died in 1887, and I went up there—

Andrew, he took my place—and I was there for a little while, got things straightened out, and then rented the place out, and come back down on to the ferry again.

Q. Well, now, Mr. Jensen, I just want to know what years you were up there. Answer that as briefly as you can.

A. Well in 1887.

Q. Just one year?

A. Well, I wasn't there a whole year.

Q. The balance of the time you were at the ferry?

A. The balance of the time, yes. I was there part of the summer, I think it was of 1887. It was the winter of 1887 that my father-in-law died, and I was there till along in the summer, and then moved down.

Q. Now, then, Mr. Jensen, answer these questions that I am asking you just as briefly as you can.

353 A. Yes, sir.

Q. Now, you testified on your direct examination that a man could get up through with a row boat from The Dalles to the Big Eddy.

A. Yes.

Q. Up to 12 or 14 feet of water?

A. That is what I believe I said, yes.

Q. Now, have you been up and down there at all those stages to see—all along have you been up and down at low water, and from that on up to 12 or 14 feet?

A. Well, I have been up there, I would judge, and then I was acquainted with the Indians that come up and down there.

Q. Could you see them going up and down there from the ferry?

A. Not after they left—I could see them up towards Three Mile, but I couldn't see them after they got around the bend there.

Q. You could see them up at Three Mile Point?

A. Yes.

Q. But after they got around the bend, they would get out of your sight?

A. Yes, that is correct.

Q. But I am asking you about how many times you went up through there at these different stages; if you went up through there at the different stages from low water up to 12 or 14 feet.

A. Yes, I went up there. I don't know that it was the exact stages, but I was ferrying there, and knew pretty well at what stages; and then I was also acquainted with fishermen that come up and down there, and I knew if they went through there I could get through there.

Q. Well, did you go through there fifteen or twenty times at different stages during the time that you lived there?

A. No, I probably didn't go that many times.

Q. How many times did you go, would you say?

354 A. Oh, probably four or five times.

Q. Now, Mr. Jensen, do you say from 1875 to 1879 was the time when the Indians were crossing the most?

A. No. Yes, from 1875 to 1879, from that time on the Indian

business sort of slacked off, and white business increased quite considerably.

Q. The Indians didn't cross so much?

A. No, not after 1878 or '79.

Q. Now, during all this time that you were ferrying there, the Indians from the Washington side, the Wish-ham Indians and the Skein Indians used to, at certain seasons of the year, take their salmon over to The Dalles and sell them, didn't they?

A. Yes, they brought over—when they had plenty of salmon they would bring them down there and sell them.

Q. Yes. Bring a great many of them over there and sell them.

A. Yes.

Q. The trading point for the Washington Indians who lived around there in that country was at The Dalles, wasn't it?

A. Yes.

Q. That was where they bought all their supplies and everything of that kind?

A. Yes.

Q. The Wish-ham Indians?

A. Yes.

Q. And the Skein Indians?

A. Yes.

Q. Sometimes when the Yakima Indians were down there, they would get their supplies there, wouldn't they?

A. Yes.

Q. And when there was any kind of a celebration on the other side of the river, a great many of them would cross back and forth?

A. Yes.

Q. Now, then, when you think they were packing salmon over there, as I understand, you judged mostly by the smell?

A. I did by the smell.

355 Q. You couldn't see—they had them packed up so that you couldn't see what was there?

A. Well, yes. That is when they were packing them with the horses.

Q. Yes.

A. Yes.

Q. That is the way they generally packed them when they packed them back over from The Dalles, wasn't it?

A. No, the most I saw coming from The Dalles, in reality, were always with the women—they were fresh.

Q. They would just get a fresh fish or two?

A. Get a few, what they could pack on their backs. The quantities that you were speaking of were when the Indians from over there would come sometimes from the Warm Springs, would come over with horses to pack them up over there, and I knew they were loaded with fish, but really I couldn't see them. I could smell them though.

Q. The Warm Springs Indians would pack them over there and sell them?

A. No, they would go over there and get them, I guess, from the Indians at Wish-ham.

Q. Oh, they would buy them from the Indians at Wish-ham?

A. I think so yes.

Q. Did I understand you that your wife was an allottee on the Yakima Reservation?

A. Yes, that is correct.

Q. Now, this time that you came down through the narrows up there above the Big Eddy, how many times do you say you came down through there?

A. I only came down through there once, but I know of several others that came down. There was a man by the name of Chapman that was having a railroad scheme on his mind, and he had men working up there, and the man is working at The Dalles—I saw him not long ago, Harry Jacobson—he came down through there.

356 I don't know but more than once or twice.

Q. That was at very low water?

A. It was at low water.

Q. Yes, and it was possible to shoot the rapids at low water?

A. Yes, it is not much rapids at low water.

Q. You told Mr. Seufert about that trip, and you would never try it again?

A. No, I don't know that I said I wouldn't try. I had a very small boat, and it got some water in, but it went all right.

Q. Didn't you tell him you would never try it again? That you needed your boat down below?

A. Well, I took it back up again.

Q. Didn't you tell him that you shot it through there, but that you would never do it again?

A. No, I don't know that I did. I took it right back up.

Q. When you took it back up, you towed it back, didn't you?

A. Yes.

Q. You had men with ropes and towed it up.

A. I had an Indian helping me, old Charley Kattalomitt.

Q. Cordelle—that is what they call the cordelle, isn't it?

A. Yes.

Q. Now, do you know, Mr. Jensen, where the mouth of the canal is?

A. Yes. I was up there last summer when they opened it.

Q. You know where it is?

A. Yes.

Q. Now, at these times when you crossed from the Big Eddy, you got in your boat at a little bay over here, or here, didn't you?

A. Yes; I think it was right here. And then Powell and Congressman George went out and they came back again. They looked on back here—they says, "I think we will go to the other side." I took them over and landed them in here some where.

Q. You misunderstood me. Perhaps I didn't make myself plain. I wasn't meaning the trip when you had the steamer up there.

357 I meant the time when you went over across here to see some of your friends.

A. Oh, yes, I came over here.

Q. You landed at a little bay over here?

A. Yes, that is right.

Q. There is a little bay here and a little bay here and the Big Eddy.

A. Yes.

Q. You landed here and then came across and landed about here where the mouth of the canal is, didn't you?

A. Yes. There is a sand beach there.

Q. There is a nice little sloping place where you could go up there—was at that time.

A. Yes.

Q. Then you walked across and walked over the railroad bridge to get to Mr. Seufert's place?

A. Yes.

Q. It was the Yakima Indians that came down there and crossed the river to The Dalles with huckleberries?

A. Yes, as far as I know.

Q. That is those that are known as peculiarly the Yakima tribe?

A. Yes.

Q. Not the main big tribe, but the tribe that lives back on the Yakima Reservation and the Klickitats that live back in the mountains.

A. Yes.

Q. They used to get huckleberries in the mountains and bring them down and sell them at The Dalles?

A. Sell them at The Dalles, yes.

Q. Now, you had seen the Indians fish up there at other places a great many times, hadn't you; at places further up the river than the Big Eddy—up above the Big Eddy?

A. Yes, I had seen them. In fact I have fished there myself.

358 Q. You had seen Indians fish up here a great many times at Skein and opposite Celilo and at Wish-ham?

A. Yes.

Q. And also on the Oregon side up there, haven't you?

A. No, not so much. The fact is that I don't know that, outside of being over at Seufert's place, that I was ever—well, the fact is, I never had any time. One winter they were short of feed up on the place, and I shipped some up, and come up and took it across up from over the mess house over to the ranch, to be fed out there; but outside of that, I haven't much business on the Oregon side, nor was I much there. When I was down at The Dalles here I was at the ferry and couldn't see much beyond.

Q. But you didn't know much about the upper river on the Oregon side?

A. No, not much. I have been there, but I really wasn't very often there, nor did I see much there.

Q. Now, about these Indians having a regular place to fish, you say that each Indian would have a place that he claimed to own the fishing place?

A. Yes, that is a family. I know this particularly at Wish-ham, because I was there a number of times and got fish there, and I have given the Indian a quarter just for the amusement of fishing in their place, to get a net. And I know that the farmers that lived out around there, they would come down and do the same thing, and sometimes catch a wagon-load.

Q. You would pay the Indians for the privilege of fishing there at their place?

A. Yes.

Q. And these places were handed down from father to son, weren't they?

A. That was the way I understood it, yes. That is the way my wife told me.

Q. And of course if one of these Indians went away and
359 left the place, some other Indian could fish there until he came and claimed it again?

A. That is the way I understood it, yes.

Q. But the Indians that owned the places, they didn't confine themselves to fishing for their own use, did they? They fished to sell, didn't they?

A. Yes, seemingly, I will tell you the habit among them is that, when they get enough to eat, and there is some of them that don't have any to eat, that they usually get out of the way till they all get enough, and then they begin to catch for selling.

Q. Well, they catch fish and sell them to the other Indians, don't they, that come in here; the Yakima Indians and other Indians that come in there, they sell them to them, don't they?

A. They have arrangements in that way, that an Indian is like it is with some other places that I have been, the Indian can get them cheaper when they are in the same family, they seem to be related together and they put them up for them, for friends. The fact is, I know that that is the way they do it.

A. And they give their friends a little the advantage; but they catch fish at those places that they own, and sell them too, didn't they?

A. Yes.

Q. To other Indians?

A. That is the way I understood, because they took fish down used to carry them across, and sell them at The Dalles to anybody that would buy them.

Q. Now, their great places to fish up there were at Wish-ham and at Celilo, weren't they?

A. Yes, that is on the Washington side in particular, yes.

Redirect examination:

Q. When you paid these Indians, did you pay for the privilege of fishing in the river or did you pay for the use of the net?

360 A. For the use of the net.

Q. Now, you spoke about taking the George party over here and landing them on the Washington side at Big Eddy.

A. Yes.

Q. When you brought them back, did you land them about the mouth of the present canal? You know where the present canal is?

A. Yes. They come out somewhere about here along, that is the way it is. I was there last summer. There is a little sand beach in there that is a good place to land.

Q. You landed them there?

A. Yes.

Q. How long were they gone then?

A. They were gone quite a long time, I should judge, nearly time enough to have gone to Celilo and back. I was there a great long time.

Q. You spoke about taking some stuff across from the mess house to your place.

A. Yes.

Q. What is that crossing?

A. Well, you can cross there most any time, because there is a Memaloose Island in the middle of the river there, and the water eddies; you can go over there any time, either high or low.

Q. Did you take food stuffs?

A. Yes. They were out of hay up on the ranch, and I took hay over there.

Q. In going up and down the river, since you have been up and down with a row boat and steamer, which is the easiest to operate?

A. Well, a row boat is really the easiest, because you can take advantage of points, catch them close and then get a back eddy; that is, when a heavy current strikes a point, some of it passes, but there is a back water that brings you back up stream, and that helps you a great deal in getting up the river.

361 Recross-examination:

Q. You can go up on a steamer in a good deal swifter water than you can with a row boat, can't you? They have a great deal more power, haven't they?

A. Yes.

Q. You can go up in a great deal swifter water?

A. Yes, they don't get tired so easy. But in this case he speaks of, I was thinking of the comparison of the boat. The old boat that I ran wasn't very swift.

Q. And with a steamer or large boat there is not so much danger of the whirlpools either, is there?

A. No.

Q. There are tremendous big whirlpools in there at any stage of water about twelve or fourteen feet?

A. When it gets above that, it gets quite dangerous, yes. That is correct, in places.

Q. Whirlpools will get so big it looks like you could look down 20 or 30 feet, doesn't it?

A. In some places; that is particularly up at the head of the rapids, you can see a tree going down.

Q. Standing right up straight?

A. Yes.

Examination by the Court:

Q. Are there any other fishing places on the north side, the Washington side, below Big Eddy? Are there any fishing places in there?

A. Oh, yes; they have tried a number of points. In fact, I had a neighbor—I lived by him—he made two or three places to fish, but I don't think that they were extra good.

Q. But I mean Indian fishing places, where it was their custom to go and fish.

A. Well, Judge, really, that place has changed. Now, for instance, on the place where I owned there was an Indian named Shello—he had a point there that he fished on while I owned
362 the place.

Q. You owned the place above there?

A. Above there. But that was not an extra good fishing place, and yet he caught quite a lot of fish there. Then he died. Nobody I know of took it up. I never interfered any. He got the fish. There used to be a fishing place away below Three Mile on the Washington side.

Q. I am asking on the Washington side, between Big Eddy and Little Eddy, where there are regular and accustomed fishing places in there that you remember of?

A. Yes, there was, where Indians would fish there, but not to any great extent. But the white folks have put up fishing places there, quite a number of them.

Q. You don't know of any of the fishing places on this side, on the Oregon side of the river?

A. Not many, no because I didn't have any business over there. All I could know was when they brought the fish and come in with them.

Recross-examination:

Q. There wasn't any Indian village below Wish-ham, was there, anywheres along down there to North Dalles?

A. There wasn't in the later years, but the fact is there used to be. There used to be an Indian village. But they had quit there when I come there. It is up on the Washington side almost opposite Three Mile Rapids. Rorick owns the place now.

Q. Above Three Mile Rapids, isn't it?

A. It is a little, yes.

Q. And back from the river?

A. Back from the river.

Q. Where there was a spring and a little lake?

A. Yes. There used to be an Indian village there.

Q. There used to be a few Indians lived there before you came?

A. Yes.

363 Q. You don't know how long before?

A. No.

Court: Do you know what they called that?

A. The only name I have ever heard for it is Luce's Lake. That is the only name I ever heard.

Court: They didn't have any name for the village?

A. No, I don't know of any name for the village.

Q. Besides that, there was no Indian village up and down the river at all between the Big Eddy and North Dalles?

A. Not that I know of, no.

Redirect examination:

Q. These whirlpools that counsel has asked you about, can you operate a row boat on the river, and still not get into those whirlpools.

A. When those whirlpools that he speaks of occur in the river, then the river is up, and it is not safe to be there with a boat, not in them particular places. Now, the Big Eddy, there is no whirlpools there of that character. There is swirls, but no whirlpools.

Q. At what stage of the river do whirlpools become dangerous?

A. Well, when it gets up to 12 or 14 or 15 or 18 feet, then it is not safe to be fooling around where the water is swift, where the whirlpools are. But they are up along the narrows, at the head of the narrows.

Q. Not at Three Mile?

A. I haven't seen any there, but I haven't been there much when the water was that high, because I was pretty busy when I was living there, and hadn't any business there during that time. That gets to be in May when it gets that way.

Q. The whirlpools you speak of, where they took down trees, were up here in the narrows above Big Eddy?

A. Yes.

Q. This old boat that you spoke of, that you had, the steamboat, how many miles an hour could it make?

364 A. It could probably make about eight.

Court: What is that inquiry for?

Mr. Rankin: The Western Queen that he took the party up in.

Court: I know, but what is the purpose of it?

Mr. Rankin: I just want to show it was not a steam vessel such as they run up there now. Counsel is drawing a comparison between steam vessels and row boats. He says about 8—that is satisfactory.

Recross-examination.

Q. You yourself are a very expert boatman, aren't you? You have had a great deal of experience in boats on water of all kinds?

A. Yes, in my time I prided myself.

Q. You consider yourself one of the best boatmen that have ever been in that country, don't you?

A. Well, as good as there is.

Q. Yes, as good as any.

A. That is true.

Q. Now, these whirlpools, they commenced to come as soon — the water commenced to get high, and got bigger and bigger as the water got high, didn't they?

A. Yes, that is their nature.

Excused.

E. B. MCFARLAND, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Where do you reside, Mr. McFarland?

A. I reside in Portland.

Q. What is your business?

A. Real estate business.

Q. Where did you reside prior to coming to Portland?

365 A. I resided at The Dalles.

Q. For how long did you reside at The Dalles?

A. From the year 1854 until the year 1891, except three years during which time we lived in the Klickitat Valley.

Q. Klickitat valley, on the Washington side, is it?

A. On the Washington side.

Q. When and where were you born, Mr. McFarland?

A. I was born in Mansfield, Ohio, in February, 1849.

Q. When did you first go to The Dalles?

A. In 1854.

Q. And what did you do? Did you have any business?

A. I was a student; went to school.

Q. After you finished your schooling, what did you do?

A. I taught school in the public school in the year 1867 and '8. In the year 1869 and '70 I was bookkeeper for French and Company.

Q. Those are the bankers at The Dalles?

A. Yes, sir.

Q. What did you do subsequently? Just describe your business there at The Dalles.

A. I went into the mercantile business in 1871 under the name of Brooks & McFarland, and four years afterwards I continued in the business under the name of McFarland & French, up to the year 1891.

Q. What did you do subsequently to that? What did you do in 1891?

A. I came to Portland and went into the banking business, and later——

Court: I don't see any use in following that up.

Mr. Rankin: All right. I just wanted to show what he has done.

Q. What years were you in the Klickitat Valley in Washington?

A. The years 1862 to 1865.

Q. Are you acquainted with the Indians from the north side, known as the confederated tribes of the Yakima, and the
366 Indians from the south, the Warm Springs and others?

A. Quite a few of them I am.

Q. Are you acquainted with their habits and customs?

A. I am.

Q. Are their relations friendly?

A. They are.

Q. Have they always been to your knowledge?

A. They have been, to the best of my knowledge and belief.

Q. State, Mr. McFarland, the facts which lead you to that conclusion.

A. We did a large amount of business with the Indians from the Warm Springs Reservation, and also from the Yakima, and Simcoe Reservation. They met quite frequently in our place of business and had there been any trouble among them I would undoubtedly have known of it.

Q. Was your place headquarters or not for the trade of those two divisions of Indians?

A. I think largely so. Father Wilbur was the agent during a part of that time at the Simcoe agency, and he did all of his business with our store—at our store; and we also did a large amount with the Warm Spring Indians.

Q. Do you speak their language?

A. I speak the Chinook, yes, sir.

Q. Are you acquainted with Three Mile Rapids above The Dalles?

A. To a limited extent, yes.

Q. State whether or not there was a tree on that point which you recall, Mr. McFarland?

A. In the earlier days there was a tree on that point near the bank of the river.

Q. Just describe that tree.

A. To the best of my recollection it was a tree probably 12 or 15 inches through; not a very tall tree.

Court: Pine or fir?

A. Pine.

367 Court: It was a pine tree?

A. Pine.

Q. Where was it located with regard to any other thing that called itself to your attention?

A. I do not understand.

Q. I am afraid even to suggest it, because counsel will object that I am leading you. Do you recall any other tree?

A. There were no other trees. There was no other tree to my knowledge in that neighborhood.

Q. Now, down toward The Dalles, do you recall any other tree down there?

A. In very early days there was a large willow tree just about opposite Federal street, down on the sands, and quite a large quantity

of currant bushes extending from that point up at least a mile or more.

Mr. Bennett: What kind of trees?

A. Currant bushes—wild currant bushes. I remember those particularly because in my boyhood days we used to go over there and gather currants and eat them. Afterwards that tree and the bushes were washed away.

Court: Do you want the history of that tree down at The Dalles?

Mr. Rankin: No. I just want to show these things were impressed upon his memory and he connected the two trees by the current.

Q. This pine tree you speak of, was that out on the point or back from the river?

A. It was back some little ways from the river.

Q. What would you say, Mr. McFarland, about the Indians crossing from one side to the other of the river?

Court: At what point?

Mr. Rankin: Any point, your Honor; I am just inquiring generally.

368 Court: Very well.

A. I have seen Indians crossing in canoes going to The Dalles.

Q. Whereabouts?

A. They would seem to be coming from points on the Washington side.

Q. Have you seen the Warm Spring also crossing over?

A. Not to my particular knowledge.

Q. What place on the river would they cross over?

A. Well, those that I have seen were simply coming to The Dalles for trading purposes.

Q. Well, they crossed at The Dalles, then?

A. Some of them came from above and down stream; but they came to The Dalles; they landed there.

Q. What would you say, Mr. McFarland, about the Indians recognizing boundaries on the river there? To make myself clear, that the north side Indians would be limited to the north side and the others to the south side?

A. I have no knowledge that they had any boundaries.

Q. From your acquaintance, would you have had knowledge if that had been the fact?

A. I should.

Q. Have you ever seen any Indians fishing off Three Mile, the point called the Lone Pine, known as Location 6 on this map—Lone Pine Point at the head of Three Mile—or along Three Mile Rapids?

A. I may and I may not. My visits to the fisheries there were simply idle curiosity, and I paid no attention to any particular points where they fished.

Q. Where do you recall having seen the Indians fish?

A. More particularly along some channel, a channel that was parallel with the river when the water was up a little ways.

Q. How far from The Dalles?

A. That was possibly four or five miles.

369 Q. Do you know where Seufert's cannery is now?

A. I do.

Q. Was it below Seufert's cannery or above?

A. I think that—let me see. It is nearly opposite and below possibly—and below.

Q. Opposite the cannery, you mean, on the Washington side?

A. No, no. I mean towards the river.

Q. Where is Seufert's cannery located, Mr. McFarland?

A. Seufert's cannery is located right near Five Mile.

Q. Here is Five Mile here.

A. Yes.

Q. This has been marked as Seufert's cannery.

A. That is right.

Q. Was the place where you saw them fishing in the little streams alongside of the river channels, was that below near The Dalles, or was it above the cannery?

A. No, to the best of my recollection it is—what I meant opposite, was down along here. There was a channel, if I remember correctly—I haven't paid particular attention to that for 35 or 40 years; I don't remember just exactly how those channels run there—but during the higher water there was a channel parallel with the river that the fish ran in in great numbers at certain times. I remember that Mark Twain one time went up there for amusement and caught over a hundred in a short time—just for amusement.

Q. Now, I will call your attention to lines on the map here running down back of this point. Do you recall whether or not those would be the channels. They are lead pencil lines. You cannot see them unless you get very close to them.

A. I do not recognize the lines from the map, Mr. Rankin.

Q. Have you been there since any fish wheels have been erected?

A. Yes, sir.

Q. Back of the river?

A. Yes.

Q. Do you know where Gulick's fish wheel is?

A. No, sir.

370 Q. Gulick?

A. I don't remember that.

Q. Where were the fish wheels you recall below Seufert's cannery erected back of the river?

A. If I remember correctly, one of those fish wheels was on this stream, this channel that ran back and parallel there.

Q. Do you recall whose fish wheel that was?

A. I do not now.

Q. Do you know Mr. Gulick, who lives up there?

A. I remember the name very well, but I do not know just where his fish wheel is located. My visits to the fisheries were purely inci-

dental. I had no interest except just curiosity and therefore I did not pay particular attention to anything, only just to see the salmon.

Q. What methods did you observe the Indians use in fishing?

A. The Indians, some of them fished with dip nets and some with the spears.

Cross-examination.

Questions by Mr. Bennett:

— Now, Mr. McFarland, do you remember where Memaloose Island was up there in the vicinity of the Big Eddy and the narrows—do you remember the island where there was an Indian burying ground?

A. Yes, I have seen it.

Q. Now, wasn't that channel that you speak of, where the fish used to run so fast, between those islands and the main shore; right along here—these being the islands?

A. The channel, Judge, that I referred to is about 20 or 30 feet wide, that at certain stages of the water used to contain a vast number of fish.

Q. Now, isn't that a little above there, along those narrows here, where the water goes through a channel back of these Five Mile Rapids, and a little above the mouth of where the channel now is?

Of course, it wasn't there then.

371 A. Possibly that is so.

Q. Well, doesn't it seem to you now, since your attention has been called to this island, to this Memaloose Island that you remember, and to the narrows there, doesn't it seem to you that that was the place where the water ran up through these channels?

A. How far up is that?

Q. That would probably be a mile to a mile and a half above Seufert's cannery.

A. No. The place I referred to was not anywheres near that distance above.

Q. You think it is right close to where Seufert's cannery now is?

A. I think it is close to where the cannery is. In here somewhere.

Q. How close to where the cannery now is, would you say?

A. Well, it might be along here. It couldn't have been such a distance as that, to the best of my recollection. I have not paid any attention to it, Judge, for 35 or 40 years. I do not remember just exactly the point where that channel is now; but I think it was much nearer. The house was situated in here somewhere—the house where Mr. Evans' family resided.

Q. You remember when Mr. Evans was there?

A. I most certainly do. That is when I used to go there most of the time.

Q. Where was this place with reference to the old Evans saltery?

A. Why, it was practically out in front of it.

Q. Right in front of the old Evans saltery?

A. Yes, pretty near.

Q. Then it was above the mouth of Five Mile Creek?

A. One part of it was, yes. Yes, it was near—let me see—one place we used to go was pretty near opposite the house.

Q. Pretty near opposite the Evans house?

A. The residence, yes.

372 Q. That is the place you have been testifying about, is it?

A. Well, there were other places too.

Q. I know, but that is the place you have been testifying to?

A. That is one place we used to go. I think one place we used to go nearly opposite where the old residence was, to see them fish.

Q. And then there was another place up there by Memaloose Island, was there?

A. I don't know particularly. I presume there was.

Q. Do you remember channels back in there where they used to fish, back of Memaloose Island?

A. I think so. I saw them all along there, and I paid no attention. But there is some particular places that we used to see that the fish were more than any other.

Q. All this down below Seufert's cannery here for half a mile is a perpendicular bluff 50 or 60 feet high, isn't it?

A. I don't remember just how high it is now; but if it is, the channel is above.

Q. Was above the cannery?

A. Above the cannery.

Q. And above the mouth of Five Mile Creek?

A. Yes, sir.

Q. Now, they have asked you about the trees along up here. You of course, know where the brewery grade is?

A. Yes.

Q. It is in the east end of The Dalles, right at the upper end of The Dalles?

A. Yes, I know where it is.

Q. And there is a road goes below the bluff, and another road goes over the bluff at the brewery?

A. Yes, sir.

Q. The road that goes below the bluff goes along up the river?

A. Yes.

373 Q. Isn't it a fact that all along there between the bluff and the river there were a great many, in the early days, a great many pine trees in there under the bluff, between where the railroad track now is and the bluff?

A. There were some trees right alongside of the road, right close to the road, yes.

Q. Extending up there for two miles above The Dalles, didn't they?

A. But those trees were close to the bluff and close to the road?

Q. Well, they extended out on the flat, didn't they, for nearly a quarter of a mile?

A. No, they didn't.

Q. What kind of trees were they?

A. There were no pine trees extended out on the flat at all to any great distance; any great distance away from the road.

Q. Any great distance from the road?

A. There were some pine trees—fir trees—no, not fir nor pine; there was some willow trees over in this same line.

Q. I am not asking you about willow trees.

A. Yes.

Q. I am asking you if there were not pine trees all along on the flat between the bluff and the railroad track in these early days, and if the stumps are not there yet—hundreds of them—all along the way up there for about two miles.

A. There was, but they were not over a hundred feet off—not more than a hundred feet away from the foot of the road, the foot of the bluff; the foot of the road.

Q. The foot of the road or the foot of the bluff?

A. The road runs very close to the bluff.

Q. Some places along there it runs a hundred yards from the bluff, doesn't it? Well, never mind about that. Now, then, how close to the river was this pine tree that you think you remember?

A. Well, that was some little distance back, the tree that I remember.

Q. How far back.

374 A. I don't remember just exactly. I don't know just how far. It was not so very far from where the Three Mile come out through the gap and ran down just about where, pretty near where Three Mile turned to go parallel with the river down. Three Mile the way I remember it—I haven't been there for 40 years, you know—but the way I remember, it ran directly down toward the river, and then turned down.

Q. Yes, I think that is right.

A. Well, it was pretty near opposite where the curve was.

Q. Now, this is pretty near opposite, is it?

A. I say the tree would be pretty near opposite the turn.

Q. On which side, above or below the creek?

A. On the river side of the creek.

Q. That is above, along the river, above the creek?

A. No, it would be opposite. Not above it, but just when the creek turned down this way.

Q. I will make it plain, I think,—looking down the creek, standing looking down the creek, was it to your right or your left?

Mr. Rankin: I would suggest you let him tell it, Judge.

Mr. Bennett: All right. I was just trying to shorten it.

A. It is all right with the Judge. It would be on the right.

Q. Looking down the creek, you think it would be on the right?

A. Yes.

Q. And how far from the creek?

A. It wasn't a great distance there.

Q. Can you give it in feet and yards, as you remember it? I don't expect you to give it exactly.

A. It wouldn't be a great distance from the creek.

Q. Give us your best recollection as to how far it was.

A. I don't know just how close that came down there—the creek came down. I don't remember the distance, nor how close it was there. I have not a very positive recollection as to the exact location of that tree as to the creek there.

Q. How far was it from the road?

A. Oh, it was quite a distance from the road.

Q. Well, about how far—the road that went up under the bluff there?

A. Maybe half a mile or so. I don't remember just exactly, Judge.

Q. Haven't you any remembrance about that at all?

A. Well, not precisely. My visits out there to the salmon fishery were mere curiosity—mere recreation—and I didn't pay particular attention to any of these points.

Q. How tall did you claim that tree was?

A. I didn't give any height of it. I said it was not a large tree.

Q. What say?

A. I said it was a tree 12 or 15 inches in diameter, to the best of my recollection, and not a very tall tree.

Q. Well, about how tall?

A. Well, it was not a tall tree; wouldn't be over 30 or 40 feet, I suppose.

Q. That is your memory of it, that it was about 30 or 40 feet high?

A. Well, it might have been 30 or 40 feet.

Q. Now, you have seen the Indians fish lots of times at other places farther up the river, at Celilo and up there?

A. Yes.

Q. A great many times?

A. Yes, sir.

Q. Does that look like the channel to you that you have been testifying about?

A. There is too much water there, Judge.

Q. What say?

A. No, it does not.

Q. Well, outside of the amount of water, does it look the same?

A. It does not.

Court: Do you recognize it?

376 A. No, sir. That looks more like the river than the side channel. That is the river really, not the side channel.

Mr. Bennett: We would like to have this marked for identification, your Honor.

Court: Very well.

Marked "Defendant's Exhibit D."

Q. Now, is that the place where people used to go up from The Dalles to see them fish generally?

Mr. Rankin: What do you mean by that?

Mr. Bennett: That place where he has been testifying to there, where he says a large number of fish went up through the channel.

A. That is one of the places, Judge, that was commonly visited for to see the fish.

Q. Is that the place that was made notorious up there, and generally known by the fact that Mark Twain went up there to fish and fell in?

A. That is the point, I think, Judge.

Redirect examination:

Q. There are other fishing places along there where The Dalles people used to go to, are there not?

A. There are. There was. We have seen them fishing at other places along there, but this particular point, it was notorious on account of the numbers of fish that used to struggle through.

Q. Now, for the purpose of refreshing your memory, Mr. McFarland, when you went up to visit the Evans place, how did you go?

A. How did we go?

Q. How did you go up there from The Dalles?

A. We would go sometimes afoot, and sometimes we went on the hand car.

Q. Was it a very long walk when you went afoot?

A. Not very.

Q. On your walk between The Dalles and the Evans place, would you observe any fishing?

377 A. Naturally we sometimes went around the road, and sometimes we would.

Q. Where did you observe the fishing when you did walk up to the Evans place?

A. We would simply see the Indians down on the river, and down along there, and paid no particular attention to them. The general rendezvous was up where they were the thickest.

Q. Where what was the thickest?

A. Where the fish was the thickest.

Q. Now, your acquaintance with fishing places, you say is limited to your trips when you were out for curiosity when you were looking around?

A. Yes, that is right.

Q. Would that confine your knowledge to the lower part of the river with respect to Five Mile, or above?

A. The nearest points would be the most, that would furnish the fish, would be the ones we would pay the most attention to.

Q. Those channels that you speak of now—the narrow channels where the fish would go through—do you know how far they were with respect to the Evans place? Were they nearer The Dalles or were they further away from The Dalles than the Evans place?

A. They were very near the Evans place; they weren't very far.

Q. With respect to The Dalles, were they nearer the Evans place or further away?

Mr. Bennett: I think he has fully gone into that, your Honor. He has stated they were right opposite.

Mr. Rankin: I don't see why the Judge should object to my in-

quiring into that when he has gone into it and placed it further away.

Mr. Bennett: He has gone into that fully.

A. They were near the same distance.

378 Q. I haven't fixed it yet, Mr. McFarland, with respect to The Dalles. Were they nearer The Dalles than the Evans place, or were they further away?

Court: Ask him whether they were above or below the Evans place on the river. He has said already two or three times they were nearly opposite so far as he can tell.

Mr. Rankin: Well, if that is the understanding, that is all.

Excused.

379 LANCASTER SPENCER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination:

Questions by Mr. Rankin:

— Where do you live, Mr. Spencer?

A. Yakima.

Q. Are you allotted on the Yakima Indian Reservation?

A. Yes, sir.

Q. What were your parents—what tribes did they belong to? Are you full blood Indian?

A. Yes, sir.

Q. What tribes did your parents belong to?

A. My mother was one of the Wish-ham; my father Wasco—I mean Cowlitz.

Q. Where were you born?

A. White Salmon.

Q. How old are you?

A. 58.

Q. Are you acquainted with Three Mile Rapids on the Columbia River?

A. Yes.

Q. How long have you known Three Mile Rapids?

A. I have known it since I was big enough to be with my mother.

Q. How did you happen to know it?

A. I used to be with my mother, crossed over the river on the Oregon side.

Q. How did you know it? Just tell what you and your mother did that called it to your mind.

380 A. About the time, sometimes about in spring, we took across there, because it was early fishing, a little bit earlier than the rest of the places. And she goes then and dries salmon.

Q. Now, where would you leave from?

A. Why, leave from—

Q. Where was your home—you and your mother's home?

A. Right just a little below where the village is now, of Wish-ham, is where Seufert has got a trolley line now, a cable across the river. That is where.

Q. That was your home, was it?

A. That was my mother's home and village.

Q. You would leave there and go to Three Mile Rapids?

A. Yes.

Q. Where would you cross the river?

A. Sometimes we crossed above the rapids, sometimes crossed below the rapids.

Q. And how would you cross?

A. With a canoe.

Q. What was the Indian name, if it had any, for this point at Three Mile Rapids—head of Three Mile Rapids.

A. Indian used to call Wah-sucks.

Q. Wah-sucks.

A. That is it means Pine Tree. There was a pine tree; there used to be one pine tree standing there alone.

Q. And what language is the word Wah-sucks? What language does the word Wah-sucks belong to?

A. Why, Wah-sucks is language of my mother's language.

Q. Wish-ham language?

A. That is Wish-ham.

Q. Now, how would they fish at Wah-sucks?

A. They used to fish with the nets and also catch the
381 sturgeons there sometime.

Q. Sturgeon too?

A. Yes.

Mr. Rankin: Does your Honor care to have me go now into the fishing, or how they fished off Lone Pine point?

Court: You can inquire whether they fished with a seine or spear, or how they fished; but I do not care to go into the manner of the construction of their instruments, because I think that has been pretty well settled.

Q. How did they fish off Lone Pine?

A. They used to fish with the nets, dip-nets; and some of them,—not very many of them—with a spear; not many of them though.

Q. How many fishing places, do you know, on this Lone Pine point?

A. Why, it is lots of little points; rock points used to be there, where they had places where they would catch fish. They knowed them; but they won't allow us to go right to the river. We could see as far as from here to—I would be about as far as to the window—and sit down there and look at them.

Q. Yes. Now, how many fishing places were on this Lone Pine point? Was it all one fishing place, or were there holes?

A. Well, it is pretty near whole, that point.

Q. Which was a preferable method of fishing—the spear or the
net?

A. Net.

Q. Why?

A. Because if they catch with the net, salmon will be weak, they would not be so strong. Another thing would be, not injured by spear.

382 Q. Not injured?

A. Injured.

Q. That is, they did not want to destroy the salmon meat with a spear?

A. Yes.

Q. Now, after they caught the fish on Lone Pine point, what would they do with them?

A. They had a temporary drying place, drying the salmon; and also they cooked it. If it was cloudy they cooked it in the fire so it gets loose out of the skin, so it would be a little bit soft, so they could mash it by hammer; so when it gets dried, after they take them out they dried it out and they get them thoroughly dried like a crappis; then they mash it easy.

Q. How would they mash it?

A. They had rocks, about that long, about that big; say about 16 or more inches, and they pound that with it; about three inches through at the bottom and two inches at the top.

Q. After they had pounded that, what do they do then?

A. They used to make a basket out of weeds, about that high, and maybe about 16 or 20 inches in diameter, and they packed it in.

Q. How would they pack it in—Just describe it.

A. When they put it in they just keep pounding with the same rocks, keep pounding until it gets well packed so the air won't go through it and spoil it. Then after they get it full, why they seal it good so the air won't get at it. That would be preserved then.

Q. What would they do with it when they had it packed in these packages?

383 A. Well, that would be used, that food would be used all around. It is used to season all kinds of berries.

Q. How would they do that?

A. The berries and the roots both. They takes that berries and when they mashes on the same that they mash it with, they mix it and pound it together; then it would be seasoned for different use; they would eat it.

Q. When would they eat it?

A. Any time, any time in the year.

Q. Winter time too?

A. Winter time too. They mostly prepare for winter.

Q. Now, was there such a place—

Court: Ask him what they called that?

Q. What did they call that?

A. Wasco calls that T-ke-lack.

Court: Is that what they call pemican?

A. All the other Indians they call it Che-lac.

Q. The Judge wants to know if that is what they call pemican?

A. It might be, but I never heard that name; but it might be the name.

Q. Now, that T-ke-lack, was there such a place here at Lone Tree for making that?

A. They making that first, when it is first run of the fish, when the water is lower.

Q. Why did they make it out of the first run of fish?

A. Why, they make it first run because that was the first fishing and early.

Q. State whether or not it was better fish or not so good as the later run?

A. Well, it is pretty fair.

Q. Pretty fair?

A. Yes.

384 Q. Was there a place for preparing that back here at Lone Pine Point?

A. Yes.

Q. Have you seen people, your people prepare that food there?

A. Yes; my mother used to.

Q. Your mother used to?

A. Yes.

Q. Where was it your mother got the fish from?

A. We get it from men fishing, and all the womens they help one another pack, and that is the way they get it; that is the way they used to supply, the man fishing and the woman takes it.

Q. The man fishing and the woman takes it. Do you know of any Indians who fished for your mother?

A. Why, when they crossed from Washington side, a man was name of Tilock.

Q. Any more?

A. A man, used to call him Hod-de-washer; and another one name they used to call him Boston; and Louis Simpson, that is the Indian's name Monight.

Q. Monight was Louis Simpson's Indian name?

A. Yes, Indian name is Monight.

Q. What tribe did these Indians belong to?

A. I won't say which side, but it seems to me it is all together; but those living the Washington side, they was coming across to fish, them party that I mention.

Q. Would you see other tribes besides the Wish-ham tribe fishing at Lone Pine?

A. Yes.

Q. What other tribes?

385 A. Why, a man was used to name Yuhmatellach.

Q. What tribe did he belong to?

A. He belonged to Klickitat. All over that there used to be camps every place there.

Q. Did you see any Indians from the south side fishing there, Wascos?

A. Why, I seen them, lot of men, but I lost some of them names, but Mark used to be.

Q. He was a chief of the Warm Spring, wasn't he?

A. Yes.

Q. How big is that stone? Haven't you one of those stones yet?

A. We have got it at home.

Q. You got that stone at home?

A. Yes, I got my mother's stone at home.

Q. You testified other tribes fished here. What were the relations of these Indians from the north side, the Washington side, with the Indians from the south side?

A. Why, the Washington side any part as far as to Wish-ham up at Big Eddy, they had one along on the Washington side and Oregon side, and they was friendly and that is how they fished together.

Q. They were friendly?

A. That is at times that I began to know.

Q. Did they intermarry, or not?

A. They married; yes, they married.

Q. What was their custom of intermarrying, the Washington and Oregon Indians?

A. Why, they had general custom of a legal marriage from all part of the country; even I have seen some of the Wenatchee peoples come in from over there, and even they did the same way.

Q. Well, I am not interested in the Wenatchee so much as I am the custom of these people from the north and south sides of the Columbia. What was their custom of marriage?

A. Why, they bind the marriage by giving the Indian property on the boy side, and the woman's side, and also had a big dinner with them, as many as can get in to be there, invite them whoever likes, and that used to mean they bind marriage, and witnesses and all, so they know they are married.

Court: You wanted to know whether they intermarried, didn't you?

Mr. Rankin: Yes, and just a brief statement of the custom, your Honor.

Q. Now, were there any Indian villages from Wish-ham down to The Dalles?

A. Yes.

Q. On the north side?

A. Yes.

Q. What were those Indian villages and where were they? What were they called and where were they located?

A. The main village was on Wish-ham; next village they call Suppunks.

Q. Where was that located?

A. That was located where Seufert has got cable line across the river.

Q. How far from Big Eddy was Suppunks?

A. I couldn't say exactly whether it is a mile or whether it is more or less.

Q. Which way, up or down?

A. Up or down, down to the river.

Q. Well, which way? Up the river or down the river?

387 A. No, down the river. Another place was called Wasnennecks.

Q. Where was that located?

A. Still below.

Q. How far above Grand Dalles now?

A. Oh, not close to Grand Dalles; it is little bit nearer to the town of Suppunks.

Q. Whereabouts from Three Mile?

A. That would be from Three Mile, probably is about, on Washington side, would be very near two miles; maybe two miles. I wouldn't say.

Q. Do the Indians now go to Lone Tree Point to fish in as many numbers as they used to go?

A. Do you mean now?

Q. Now.

A. No.

Q. Why?

A. Why, the last some of them—some of them get busy on the Warm Spring on their ranches, and still they comes after fish. And some of them fishing, but not as many as there were. And another thing, they couldn't catch fish because they got wheels there where they used to catch fish, where they had accustomed places, where is wheel upon places, why, they can't get at it.

Q. Who has those wheels? Who owns them?

A. Why, I think Seufert owns it now.

Q. Did you ever talk with Mr. Seufert about fishing in there?

A. Why, 1914 was the last I was there. I asked him if he could give me a job to allow me to fish there. That is I asked him personally to give me a scow so I can fish.

Q. What did he say?

388 A. Why, first he says if I was come a little earlier he would build me a fish boat; and after he says—still I was asking him and begging for a place—and he says, "I can fix that for you so it will be all right to fish on Washington side."

Q. Go ahead. What else was said?

A. So that is the first conversation we had; and next conversation, I went over there, I asked him, he says, "I will fix and take the scow on the other side where that on the island, there is a house there you can live there, and I will let the boys take the fish wheel and then they will fish there. But you got to be careful." I says, "If there is any river man understands how to handle, that is the man I want." He says, "Of course, many mens understand that." So I was satisfied. So I stayed there around there. He says, "You wait till it is ready to fish." That was before the month of May. And after that then I went and say again, the time they was taking all the fish, they was crossing on Washington side and fixing up ready to run in the

month of May, then I seen in the cannery—he says, only last word, he says to me, “You ought to be with Peter Jackson, fish together.” So got kind of lost on that. So I feel that probably I won’t get it.

Q. What did you do then?

A. Then I stayed with Peter Jackson to help him, and we didn’t fish together, but I just helped him.

Q. What did you do then?

A. Then in June I went home.

Q. You went home? You didn’t fish that year?

A. No.

Q. Now, did Mr. Seufert talk with you about other Indians
389 fishing on the river?

A. Why, we had quite a little bit of talk just like anybody talk together. He says, “The only thing these Indians down here is more bothers, so the more interferes with my wheels.” He don’t catch very much in the wheels, “they could fish somewhere else, so they won’t bother my wheels, that is, so the wheels don’t catch the fish.”

Q. Did he ever mention any particular Indian?

A. No, he didn’t mention, that is, on that side, on the Oregon side.

Q. Did he mention any Indian on the Washington side?

A. Why, he says on Washington side there is old man Mr. Bill Charley. He says, “He is a good man—a good old man. I like him, but only thing he don’t do right.”

Q. Did Mr. Seufert say why he didn’t do right?

A. He says when he catch a fish, the best part of the fish he takes down up to Centerville and peddles there.

Q. Centerville?

A. Centerville; “and delivers the fish small size and more like is a cull, but best fish he peddles.”

Q. Did you ever tell any of the people back on your reservation what Mr. Seufert had said?

A. No.

Q. You testified you had seen Indians fishing at Lone Tree. Mention some of them. What Yakima Indians have you seen fishing there?

A. I seen a man, used to be Yakima Indian, Homer. He is living yet.

Q. And who else?

390 A. And a man, he is dead now, used to name Tee-ouk—that means leg. And a man, he used to come, he was name of Tan-a-washa.

Q. Was he a Yakima?

A. Yes, that is genuine Yakima.

Q. Anybody else?

A. And another man was name of Chass.

Q. Who else, if any one?

A. Watch-ouka.

Q. Anybody else?

A. There was, used to call him Sil-up-pum.

Q. Are these all Yakimas you mentioned?

A. Now, this is all genuine Yakimas.

Q. Is there anybody else that you recollect?

A. I know a great many of them. I forget the names, but I know them.

Q. You testified to Louis Simpson fishing there a while ago. Was he a good fisherman or not?

A. He was a fine fisherman.

Q. Was he considered an expert?

A. Yes.

Q. Now, you spoke of Peter Jackson. Do you know him?

A. Yes, I know him.

Q. How long have you seen him fishing there?

A. Oh, I have seen him there a long time, since—I suppose since he was big enough so he can fish; but I know him from little boy, he was there all the time, only few years he was in school in Yakima. That is all. But the rest of the time he was always at The Dalles.

Q. Do you know Sam Williams?

A. Yes.

Q. How long have you known Sam Williams?

A. I know him for long time. About 40 years more or less.

391 Q. Have you seen him fish at Lone Pine?

A. Yes.

Q. How long have you seen him fish there?

A. Well, he fished there quite a while since he got that woman, since he was follow up, and he live there in The Dalles. That is lately I seen him when I stons off.

Q. When did you first see him fish at Lone Pine?

A. I seen him about, somewhere about, probably about 16 years, somewhere about that.

Q. Sixteen years ago?

A. Yes, I think somewhere along there.

Q. How was he fishing then?

A. He was fishing with dipnets first.

Q. Have you seen him in late years?

A. I seen pretty near every year, pretty near pass there, and stop off.

Q. How was he fishing in late years?

A. With a wheel; that is, he fished a few years now.

Q. A few years?

A. Yes.

Q. Do you know how long he has been fishing with a wheel?

A. I don't know how long he is fishing.

Q. And where has he been fishing with a wheel?

A. Right on Wah-sucks.

Q. How many years, if you recall, do you remember of seeing him fish at Lone Pine with a dip net?

A. I knowed him for, well say about, last I seen him with dip net was probably, was fishing nine years, something like that.

Mr. Bennett: Fishing how long?

A. Probably nine years, that is, that I seen him.

Q. With a dip net?

A. With a dip net.

392 Q. You spoke about crossing from the Washington side to the Oregon side. Where did the Indians cross?

A. They was cross just a little below the cannery they landed.

Q. Did they have any other crossing places?

A. Below the rapids, right straight where the fishing place is, that is Wah-sucks.

Q. Have any other crossing places?

A. Why, they got another, they had another crossing above, away above Wish-ham.

Q. Away above Wish-ham?

A. Yes.

Cross-examination.

Questions by Mr. Bennett:

How old do you say you are, Spencer?

A. Fifty-eight.

Q. Fifty-eight?

A. Yes.

Q. And where were you born?

A. White Salmon.

Q. White Salmon?

A. Yes.

Q. How long did you live at White Salmon?

A. I was a baby, and my mother says I was born there. Then I was taken to Yakima Reservation when I was a baby.

Q. Taken to Yakima Reservation when you were a baby?

A. Yes.

Q. Did your father go over there with you?

A. Yes.

Q. Is your father alive now?

A. No, he is dead.

Q. When did he die, about?

A. About four years ago.

Q. About four years ago?

A. Somewhere along there, somewhere about four or three.

393 Q. Now, when your mother was down here in the vicinity of The Dalles fishing, would your father be with her?

A. No, he was working for the Government. He was scout and he always been in the forts, and visit in the forts.

Q. He doesn't come down here at all?

A. He don't come down here at all.

Q. You say you claim to have seen Sam Williams fishing at this point with a dip net, at this point you call Wah-sucks, about 15 or 16 years ago?

A. Somewhere along there.

Q. And from that time on up for about nine years?

A. Probably about that long. Of course I don't recollect exactly.

Q. Now, during that time, how many times were you over there?

- A. Oh, I come there many times, pass through it and stop off.
Q. What say?
A. Many times I come through there and stop off, all the time.
Q. Come through there. Where would you be going?
A. First I used to go to my uncle, used to live down here at the Lewis river, and next I used to go pretty often, once a year, to the Chemawa, where my children used to be in school.
Q. To where?
A. Chemawa. Salem.
Q. Salem?
A. Where the Indian school is.
Q. And where would you be going from?
A. And some time come down this way on horseback or else with wagon.
Q. Where from?
A. From Yakima.
Q. From the reservation.
A. Yes.
Q. And would you go clear through to Salem in a wagon?
394 A. No, take a boat.
Q. Where?
A. At The Dalles; from The Dalles.
Q. You say you had an uncle that lived up there somewhere?
A. Lewis River.
Q. And where is that, down in Washington?
A. Yes, on Washington side.
Q. Away down below The Dalles?
A. Yes, below from Portland.
Q. Yes, below Portland it is. Now, did you have any relatives there at Lone Tree, at Wah-sucks?
A. Yes.
Q. Who were your relatives there?
A. Mark. His name was Mark.
Q. Mark?
A. Mark. Mark, a chief Wasco.
Q. What relation was he to you?
A. He was relation to my mother somehow—some way.
Q. How long did he live down there?
A. Why, I don't know how long he live down there till he leave Wah-sucks to the Warm Springs, and that is the last I know of him.
Q. Is that when you were a boy?
A. When I was a boy, yes.
Q. About how old?
A. Well, last time I think he was about, somewhere about pretty close to 70 when he died.
Q. I know, but about how old were you when he went to the reservation?
A. I think I was about somewhere about 16 or 17.
395 Q. Yes. That was the time he went over to the reservation to live, was it?

A. Probably that time he went. But that is the last time I knowed him and I seen him.

Q. Then after that you didn't have any relatives there at Wah-sucks?

A. Oh, there was an old woman there that was related to my mother too. I think she is living there yet.

Q. What say?

A. I think she is living at The Dalles yet.

Q. What is her name?

A. It is pretty hard to name, but I will mention it. It is the old man, they call him Sock-up; that is his wife; or the other name they call him Alcohol Jim. That is his wife.

Q. Where did they live?

A. Generally they live in Wah-sucks.

Q. What say?

A. Generally they lives in Wah-sucks, the last I seen them in 1914.

Q. Now, where did your mother live at the time when you used to go across there to this place?

A. General living place was on where they call the Sha-pon-uks, where the trolley line is.

Q. Well, what tribe did your mother belong to?

A. Wish-ham.

Q. Wish-ham. Now, where was this place that you call Suppunks? Now, this is the Big Eddy here. You know the Big Eddy?

A. Yes.

396 Q. Here is the mouth of Five Mile Creek, here is Mr. Seufert's cannery, here is the Narrows above the big eddy, here is the point that is in dispute; The Dalles is down here, Grand Dalles right across the river.

Mr. Rankin: I would suggest you ask him about the map, Judge. I think he can qualify it.

Mr. Bennett: I was just explaining it. I think it is admitted I have explained it right. I didn't want to take any advantage of the witness.

Mr. Rankin: No; no question about that.

Q. Assuming that these places were as I have stated, whereabouts was Suppunks?

A. This is Island graveyard, and there is place there, and there is comes around, the trolley line is right here, some place pretty close to there, the house was there. But what is more narrow, the river is there, is a little below there.

Q. Right at the narrows below the Big Eddy. Some of the witnesses have testified that there is a little bay here where you see these marks, and another little bay where you see these marks.

A. Well, there is no bay there. It is pretty strong currents there, and when the water gets low it is away down, and then it is big bluff there, just a little ways from Wish-ham, comes around this way, and there is the place. Of course there is a graveyard.

Q. That's Memaloose Island?

A. Yes.

Q. And your village was right back here opposite Memaloose Island, and right back here from the Big Eddy?

A. No, not right opposite, but below; not exactly opposite.

Q. Well, where was your place with reference to this little bay? How far from that?

A. Oh, it was quite a ways up. This bay is a little above that.

Q. Your village was a little above that?

A. No, below that.

Q. About how far; do you know a quarter of a mile? and all those things—you went to school?

A. Oh, probably it is about a mile or so, something like that.

Q. About a mile or so?

A. Yes.

Q. Well, was it out on the rocks or was it back where it was grassy and nice, the village?

A. Why, it is a very nice place. It is a flat.

Q. A little flat covered with grass?

A. Kind of long, yes.

Q. Yes; and was there a spring there?

A. There was no brush that time; there was no brush of no kind that time; but there was a little spring there above.

Q. That is what I mean, a little spring there.

A. Yes.

Q. That ran down into a little lake?

A. The lake was up above, away up on the bench.

Q. Do you know where there is a long slough runs along here, with deep, precipitous banks straight up and down on each side, a long slough runs along here parallel with the river, back from the river a ways; do you know where there is a long slough there—deep place in the rocks?

A. Yes. There is so many, I don't remember that, because there is so long—I didn't go there last year at all. But there is a slough there all right. It is deep.

398 Q. Yes. Now, which side of that slough? Were you between that and the river or farther away from the river?

A. Well, it is a little more to one side.

Q. Well, was it between that slough and the river or above the slough or below?

A. Now, this is the river, and this slough runs through there. Of course it ain't very far from the river though.

Q. What say?

A. It isn't very far from the main river.

Q. About how far, about half a mile?

A. Oh, I wouldn't judge how far. Maybe half a mile or more or less.

Q. This in here is all bare rocks, ain't it?

A. Yes.

Q. Just all bare rocks in here between the slough and the river?

A. Yes.

Q. Now, this grassy place was over on the other side of the slough, wasn't it?

A. Um-um. It is little patches of grass is there.

Q. That was over back of the slough, wasn't it?

A. Yes, little patches.

Q. Now, when do you claim that Indian village was there? What year?

A. It wasn't very long time. Maybe it is about—that is, the main time that the Indians had the last village probably, that is, generally was living there, I guess over 20 years. That is the main part—the main people used to be there,—before the wheel was put in, I suppose.

399 Q. Now, how many Indians lived in that village before 20 years ago?

A. Oh, there was quite a number; probably, that is when there is season fishing, probably 100 or more.

Q. Do you claim that they had houses there and places to dry fish up to 20 years ago?

A. They had temporary houses there in summer time to dry their fish.

Q. Platforms to dry fish?

A. Yes.

Q. Did they leave them there all the time, these platforms?

A. No, they didn't. They have to store away for the winter, in winter time.

Q. Well, did they store them away there on the ground?

A. They fixed it up so they wouldn't be laying on the ground at all. They would fix it so the ground wouldn't be injured.

Q. Now, was there any other Indian village between Wish-ham and North Dalles?

A. You mean between The Dalles?

Q. Yes, on the Washington side between The Dalles and Wish-ham, was there any other Indian village besides this that you call Suppunsks?

A. There was another between Wish-ham and The Dalles was name Wasnen-necks.

Q. Where was that?

A. That was still below Wish-ham.

Q. Show us on the map where that was. I wish you would take my pencil before we pass to that, and mark a little round circle where you claim Suppunsks was. Just wait a minute. I want to ask you another question, so this won't be misleading. Do you understand that these white lines are the shore of the river; that on
400 that side and this on this side, that that is the shore of the river? Do you understand that?

A. Yes.

Q. All right. Now, this is the shore of the river on the Washington side, then. That is where Five Mile comes in here?

A. It is right a little above this. It is round here, some place round that.

Q. Well, you mark a round circle there where you think it was. Don't get it out in the river.

A. Now, here is the river. It is a little above here. Of course this river is not exactly as it is, but it runs right in this way.

Q. Mark it where you think it was.

A. Well, if there is no objection to you any place, if it is lost it ain't much difference.

Q. This other village you speak of, whereabouts was this?

A. Which you mean?

A. The one you spoke of last. I can't call the name.

A. That is where I marked it out.

Q. This is the one you call Suppunks?

A. This is Wasnen-necks, and this other is a little ways from it.

Q. Mark the other where you think it is.

A. It is somewhere along here pretty near. I won't say where, but then it is pretty close here some place.

Q. Mark a round circle there where you claim it is.

A. Well, I mark it. (Witness marks.)

Q. Now, were there any other Indian villages between there and The Dalles, or between these two and Wish-ham? Were
401 there any other villages on that side between Wish-ham and The Dalles besides these two that you have marked?

A. I don't think so. I don't think there was any. I don't think there was any, that is, village, along there, because there was too hard—too bluff. They can't get down.

Q. So those were the only two there were?

A. That is what I remember of, that I seen.

Recess taken until 2 P. M.

January 25, 1916—2 p. m.

LANCASTER SPENCER resumes the stand.

Cross-examination continued:

Q. You say, Mr. Spencer, that you had some talk with Mr. Seufert about fishing with one of his scows?

A. Yes.

Q. What year was that?

A. 1914.

Q. And he sent you down to Peter Jackson's?

A. Why, that was last—that was last conversation we had.

Q. Yes. Then after that for some reason he kind of put you off and didn't seem to want you to fish?

A. Yes.

Q. Well, now, wasn't that because you got down there with Peter Jackson and got to drinking?

A. Well, I wasn't drinking at all that time, but I know they was drinking, a whole lot of them.

Q. What say?

A. There was a whole lot of them drinking, I know that.

Q. Wasn't you drinking down there?

- A. I take a little drink once in a while, but not often.
- Q. But weren't you getting intoxicated down there, and wasn't that the reason Mr. Seufert didn't want you to fish?
- 402 A. Well, somebody had told him that, but he never saw me.
- Q. What say?
- A. He never saw me. Somebody had told him that.
- Q. He told you that somebody had told him that, did he?
- A. Yes.
- Q. That you were drinking down there; and that is the reason he didn't want you to fish?
- A. Yes, that is the report he got.
- Q. Didn't he tell you that you had been drinking when you came up there to talk with him sometimes?
- A. No, I wasn't drinking at all.
- Q. Now, he also told you at one time that Bill Charley—was it?—was a pretty good man over on the Washington side, but that he didn't do right?
- A. Yes.
- Q. Yes. He told you that he would catch the fish and take the good ones over to Centerville?
- A. Yes.
- Q. And bring the culls over to him?
- A. Yes.
- Q. And that he didn't want to buy the culls?
- A. That is the reason why he didn't like him.
- Q. Now, Mr. Spencer, you were a witness in the case of Seufert v. Olney, weren't you?
- A. No, I don't know which side I was that time. They had asked me both sides to prove it.
- Q. You were a witness in that case, weren't you? You testified—you gave your testimony in that case, didn't you?
- A. I gave the whole thing, yes.
- 403 Q. You were called by the Government? The Government was appearing in that case for Olney, wasn't it, just the same as it is here for Williams?
- A. I think so.
- Q. And you were testifying—you were called as a witness by the Government, weren't you?
- A. Yes.
- Q. Yes. And Mr. Avery was the district attorney over there, wasn't he?
- A. I think so.
- Q. And you remember giving your testimony before the referee or master in chancery over there?
- A. Yes.
- Q. Now, that was in 1909, wasn't it?
- A. About—I don't remember.
- Q. Along in the spring or early summer of 1909?
- A. Somewhere along.

Q. Now, you testified at that time that you were 50 years old, didn't you?

A. Probably. I don't remember what I said that time—the year.

Q. What is that?

A. I don't remember how much year I called that time.

Q. You don't remember whether you testified that you were 50 years old, or not?

A. Probably I say that.

Q. Now, didn't Mr. Avery ask you this question: "What is your age?" And didn't you say "Fifty"?

A. Probably I say that.

Q. Now, what tribe do you say your father and mother belonged to?

404 A. My mother was Wish-ham.

Q. And your father?

A. Cowlitz.

Q. Cowlitz?

A. Yes.

Q. Now, didn't you testify at that trial that your father and mother were Klickitat Indians?

A. That is the way they call it now, all calls Klickitat.

Q. Well, they don't call the Cowlitz Klickitats now, do they?

A. They call it that, yes. They are all mixed up.

Court: Are they all on the Yakima Reservation?

A. Yes, they are most of them.

Q. Now, at that time, when you were testifying in answer to the questions asked by me on cross-examination, didn't you say that you didn't go back to the Columbia River after you were 15 years old; that you didn't go back there any more after you were fifteen years old?

A. That is, I didn't remember exactly that time how old I was when I entirely go over the Agency.

Q. Well, didn't you testify that, when you were about 15 years old you left school; that when you were big enough to work in the shop, you worked in the carpenter shop all the time, and in the wagon shop, and didn't go back to the Columbia River any more, or words to that effect?

A. That was a fact.

Q. That was a fact, was it?

A. Yes. But then I used to take one month's vacation every year.

Q. What say?

A. I used to take one month's vacation every year.

Q. Well, didn't you testify that you didn't go back there any more; that you didn't go back there for fishing any more, or go back there at all any more?

A. Probably I say that; but that is, I didn't stay there
405 very long on the Columbia. I never stayed very long, just came over and back.

Q. Now, you didn't testify then that you didn't come over there at all after you went to work in the carpenter shop?

A. Well, I testified, that means I didn't stay a very long while on Columbia, only come over see my mother, and go back, and mostly I stayed right in the agency.

Q. Where did your mother live?

A. She used to come to Columbia river every year, every summer.

Q. Well, whereabouts on the Columbia River did she live?

A. Just where the Seufert cable line is.

Q. You testified these two Indian villages that you talked about before dinner, they were about where Seufert's cable line runs across now, were they?

A. That is one; that is one village.

Q. That was the one where your mother lived?

A. Yes.

Q. How far was the other one from that? Just a little ways?

A. Yes, down below.

Q. About a quarter or half a mile?

A. Oh, more or less.

Q. How old were you when you first commenced to go to the Columbia River? About ten years old?

A. Why, somewhere along the last I left, that is, so I wouldn't stay there, you know, except vacations, I think I was somewhere about 15 or 16 or 17—somewhere along there.

Q. I am asking you now when you first commenced to go there, not when you last went there, but when you first commenced to go there as a boy, how old were you? About ten years old?

A. Oh, somewhere about nine or ten.

406 Q. Then you went there a little while every summer till you were fifteen?

A. Yes. That is, to stay with my mother all summer; commenced about somewhere about when the fish is running, somewhere about May—sometimes in April—up to August.

Q. Now, during those years you were going to school, weren't you?

A. August?

Q. No; but I say that during those years from the time you were ten years old until you were fifteen, you were going to school, weren't you?

A. No.

Q. You were not going to school?

A. No. That time I went to school first one year, the time there was a school first, and then I quit. Then I went to school one year. And then the Government laid off quite a while—never been school—and then it begins the school again. Then that is the time I went to school.

A. How many years did you go to school that time?

A. The last time?

Q. About four years?

A. Last time?

Q. Yes.

A. Three years.

Q. Three years?

A. Yes.

Q. That was then from the time you were about 12 years old till you were about 15, was it?

A. I went to school first somewhere along about, maybe I was 10 or maybe I was 11, somewhere along, just one year.

Q. And you went a year, then you laid off a while?

407 A. Laid off long while.

Q. Then you went to school three years more?

A. Yes.

Q. Now, how old were you when you quit going to school?

A. Well, I think I was somewhere about 18, somewhere along there; 18 years old, somewhere along—of course I don't remember—somewhere along there, because I was apprentice.

Q. That is, apprentice to the carpenter and wagon-maker's trade after that?

A. All around gun-smith shop too.

Q. That was when you left school?

A. After I left school, yes.

Q. Now, when you were going to school there, you only went down to the Columbia River during vacations, didn't you?

A. Yes.

Q. Now, your vacations commenced in July, didn't they, and lasted about three months?

A. Well, after I got through at the apprentice, then I was study the Government service. That is the reason why I used to allow me only one month to go wherever I wanted, and if I was study Government service, Indian service.

Q. You don't understand me. I am asking you about when you were going to school, not when you were an apprentice, but when you were going to school. Now, your vacation would commence some time about in July, wouldn't it?

A. After July.

Q. Yes, after July, and last until some time in the fall?

A. About the first of August.

Q. So that during those years you would not get down to the fishery until July?

A. In the month of July sometimes.

408 Q. Yes, in the month of July some time?

A. Yes.

Q. Now, did you testify this way at the time that I have asked you about, and in the presence of the persons who were there at that hearing, including Mr. Avery and myself: "You say your mother lived there at that time?"

A. She used to come there from Yakima Reservation. She used to come there to Columbia.

Q. Come there to spend the summer?

A. Yes, in fishing time.

Q. That would be every spring until fall?

A. No, she don't stay there late fall at all. She stay there about two or three month.

Q. During the fishing season?

A. Yes.

Q. And then you would be down there pretty much all the time while she was there?

A. Yes. That is, after vacation. That is, after we had got school till the first of July, and then we quit, and then I go there sometimes.

Q. Were you going to school at that time?

A. Yes, I was in school.

Q. And you would have your vacation commencing about the first of July?

A. Yes.

Q. And then come there and stay until the fishing season was over?

A. Yes.

Q. And that continued up until the time that you was 15 years old, you say?

A. Well, I was somewhere along that time." Did you testify that way?

A. Yes.

Q. Did you also testify in the same connection: "After that, had you been back there since that time?"

A. After that I was big enough to work in shop I never went there no more. I work in carpenter shop all the time and wagon shop.

Q. You have never been back there since?

A. The last time I was there. Well, I was there last year coming home."

— Did you so testify?

409 A. That is right.

Q. Now, Mr. Spencer, it was the custom of the Indians from the reservation, when they would come over there, to buy their fish and trade for them, wasn't it?

A. How is it?

Q. When the Indians from the reservation came over to the Columbia River, it was their custom to buy their fish and trade for them, wasn't it?

A. Exchange, yes; exchange, those other Indians bring something else to exchange; that is, if they don't want to fish; and they have to exchange it, and take their dried fish home.

Q. Yes. And they brought a good deal of this Indian flax over there and exchanged it for the fish, didn't they?

A. Yes, for the flax. That was a valuable thing they had on the river.

Q. And the Indians on the reservation had that flax, and they would bring it over and trade it to the Indians on the river for fish?

A. Yes.

Redirect examination:

Q. Mr. Seufert called you to testify in the Olney case, didn't he?

A. I don't know which one was called, but then, of course, they

called me on the witness stand, and I don't know whether it was Seufert or whether it was Olney's side. I never knowed.

Mr. Bennett: As a matter of fact, it was the Government.

410 Q. Do you know your exact age, Lancaster?

A. I know exact now. That is now since Mr. Pope came from Portland, and then he know that very well familiar when we was born.

Q. When was that that you talked with Mr. Pope about it?

A. I think about three years ago—three or four years ago, he was over on the Yakima.

Court: Did he know when you were born?

A. He knowed when he was in White Salmon the time my father took the Indians over to the Yakima.

Q. Well, did he know when you were born?

A. He knowed it, yes.

Court: Who is Mr. Pope?

Mr. Rankin: I don't know.

Q. Who is Mr. Pope?

A. Well, he lives in Portland some place.

Q. What does he do?

A. I don't know.

Court: Was he connected with the Indian service?

A. He was pretty well connected with Bancroft.

Court: The historian?

A. And Mr. Pope and Bancroft's daughter was over the Yakima once to see me.

Q. That is the Bancroft who writes history?

A. Yes, I think so probably.

Q. Now, when you were asked to locate these Indian villages, you were moving down Five Mile, and counsel said don't put the village in the river here. Why did you trace across that way Lancaster?

A. Because I seen it from the other side. I seen it from across Washington side.

411 Q. Saw what?

A. That creek.

Q. Five Mile?

A. Yes. And there was another house above there, we could see it from across the river.

Q. And that is the reason you traced across there to locate the villages on the other side?

A. Yes.

Mr. Bennett: Do you contend the village was on the Oregon side?

Mr. Rankin: No, no, not at all. I was just wondering why he did that.

Q. You spoke of Alcohol Jim. Where did he live?

A. Why, Alcohol Jim used to live down Hood River, and comes up; then he stays on that Wah-sucks place, then he stays there and fish.

Q. How long did he stay there and fish?

A. Why, he stays there until mostly the village, he stays there and when the river gets high, flows over, runs over that island, then he cross on the other side.

Q. How long did he stay around Wah-sucks?

A. Why, he stays sometimes when the high water comes.

Q. How many years?

A. Oh, he stay many years. He pretty near raised there.

Q. Is he alive now?

A. Yes.

Q. Where is he?

A. At The Dalles. I think he is around The Dalles some place.

Q. Alcohol Jim?

A. Yes, Alcohol Jim. But that is different name. That is the first time I learned, 1914, he is Alcohol Jim. But his name — Clock-kut.

Q. What became of him? Was he ever allotted?

A. I don't know whether he is allotted.

412 Q. Now, you also spoke of Mark. That is Chief Mark?

A. Yes.

Q. He was chief of the Warm Springs, you testified.

A. Of the Wascos.

Q. Yes, of the Wascos. Is he alive now?

A. No, he is dead.

Q. How long ago has he been dead?

A. I don't know. It is quite a good while.

Q. What became of his family after he died?

A. Well, his family pretty near all gone, I think.

Q. They were on the Warm Spring, as I understand, at the time of his death, were they?

A. They was in Warm Springs for quite a while; and some — his friend — got a jealous on him, so he went to Yakima, and we built a house for him—that is when I was carpenter, we built a house for him.

Q. And the family then moved and stayed at Yakima, did they?

A. They stayed there, he went back, that is from Warm Spring moved to Yakima.

Q. Do you know whether they were allotted on the Yakima or not?

A. Both his wife was living was been allotted and some of his children.

Recross-examination:

Q. He —as Chief of the Wascos, was he?

A. Who?

Q. Mark.

A. Yes, of Wascos.

Q. Now, this Mr. Pope, you say he was with Bancroft the historian?

413 A. Why, he must have been, but I never knowed. That first time I seen him in Toppenish, he come there, Bancroft's daughter and Pope.

Q. Well, that was a long time before you testified in this other case, wasn't it? It was a long time before you testified in this other case that Mr. Pope was over there and talked to you?

A. No, Mr. Pope was just a few years ago in Toppenish.

Q. Wasn't that before you testified in that Seufert case?

A. No, I never seen him.

Q. What say?

A. I never knowed nothing about that. I didn't testify that, I don't think.

Q. I know. I don't mean you testified to it. I don't mean that. But this talk that you had with Mr. Pope was a long time before we tried the Olney case, wasn't it?

A. Yes, before, yes.

Redirect examination:

Q. How many times have you seen Mr. Pope?

A. Once.

Q. Only once?

A. Yes.

Court: What time did you try the Olney case?

Mr. Bennett: In 1909.

Court: He said it was about three years ago that he saw Pope. I think he must misunderstand it, because he said on your cross-examination it was about three years ago he saw Pope.

Q. Just explain that, Lancaster. You testified on redirect examination, when I asked you, that you saw Pope about three years ago and talked with him about your age.

A. Somewhere along.

414 Q. Well, now, you told Mr. Bennett that you had talked with Pope before they tried the Olney case; that was before 1909. That would be six years ago.

A. No, this trial Yakima was before I saw Mr. Pope.

Recross-examination:

Q. You claim you saw Mr. Pope or Mr. Polk after this trial over at Yakima.

A. Yes.

Excused.

415 Doctor SHEA-WA, called as a witness on behalf of the Government, being first duly sworn, testified as follows.
Charley Pitt, Interpreter.

Direct examination:

Questions by Mr. Rankin:

What is your name?

A. Doctor Shea-wa.

Q. Where do you live?

A. My home is at the reservation.

Q. What reservation?

A. Yakima.

Q. Have you trouble?

A. I am in trouble, yes.

Q. What is the affliction?

A. Well, the various things that has taken place today.

Q. Well, I am not referring to the case. I am referring to your physical trouble.

A. Yes, I am afflicted quite a bit, you know, that I cannot see good.

Q. Talk louder.

A. He says, yes, I am afflicted, my body is afflicted, you know, that I cannot see good.

Q. When did this blindness come upon you?

A. Four months ago I turned blind.

Q. Where were you born?

A. At my native country, Skein.

Q. What was his parents' tribe?

A. They both belonged at Skein.

Q. To what tribe?

A. They come under the language of what I use now. It is the Warm Spring language.

416 Q. Are you acquainted with the fishing along the Columbia River?

A. I do. I am acquainted with it.

Q. What was the Indian fishery nearest The Dalles of any note?

A. He says the nearest fishing point was Wah-sucks. That is a little piece away from the river, this Wah-sucks was, but Kum-sucks was right at the water.

Q. What is the difference between Wah-sucks and Kum-sucks?

A. He says the name of Wah-sucks is a lone tree. That is away from the river—that is Wah-sucks. But Kum-sucks is the name of the place where they catch fish down at the water there; away from the tree, down to the water.

Q. Yes. What can you say of Wah-sucks as to size and importance as a fishery?

A. He says I cannot tell you all the particulars about that name. All I know that Wah-sucks was a name long before I existed, away clear back. I don't know why they called that Wah-sucks. And it was not a large tree at all. It was a small tree.

Q. Had he seen the tree before his affliction?

A. He says. I believe I said in my statement I only went blind four months ago. And before that I have seen the tree in places where I have been accustomed from my young life.

Q. What kind of a tree was it?

Court: I think that has been proven.

Mr. Rankin: All right, your Honor.

Q. He didn't understand my question a while ago. I want to know as to the importance and size of this fishery to the Indians.

417 Interpreter: Fishery?

Q. Yes, Wah-sucks.

Court: Wah-sucks was the tree as he described it.

Q. Kum-sucks, then. The importance and the size of it.

A. Size of the fishery or size of the tree, which?

Q. The size of the fishery. Was it many fish or few fish?

Interpreter: The interpreter has got to ask too.

Q. Yes, that is right, Charley.

Interpreter: I want to get it right.

A. Kum-sucks is an old Indian name—is an old Indian name away back; and it was a place where Indians came to fish there without number. There they stayed until the fishing was done. Then they moved.

Q. Was it a good place to fish or not?

A. I believe it was; and I also know that it was a good fishing point too, myself.

Q. Did you fish there?

A. I have many times.

Q. You have many times?

A. Yes.

Q. What other Indians from the north side fished there?

A. He says, your Honor, the people that belonged to the Columbia River, and from Yakimas—Mul-mul, they call at at the agency there; they used to come over from Yakima and fish, and other Indians that were up and down the river, they also fished there.

Q. Name some of those Indians.

A. St-wei and In-ne-us and To-a-chlish. His English name is Stick Joe. He was a lame old man. That was his English name,

Stick Joe, and his Indian name was To-a-chlish, and St-wei's

418 English name was White Swan.

Q. Any others?

A. I couldn't name the parties—it has been so long ago since I have seen them there—but there was a good many Indians that come from over there.

Q. Were their relations friendly or not with the tribes on the south side of the river?

A. The people from both sides of the river were always peaceable

as far back as I know, and as far back as I have heard from my forefathers they were all friendly, they never had trouble any time.

Q. A white man wrote a book in which he said they had had trouble. Do you know anything about such trouble?

A. My father before me never told me of any trouble before my time. Nor either have I seen or have I ever heard any wars about over anything. The river, the Columbia River, was a table between them.

Q. Was a table?

A. Was a table, yes. Had nothing to fight for. Everything was free.

Court: And they all used at the same table?

A. The river, I might say, was a table for both, both sides of the river. It laid right in between them, and they came and ate and were gone.

Q. What kept them friendly?

A. As far back as I learned anything about them, my forefathers have married each way. They were related by marriage as far back as I have ever heard anything about the people. And in my time they have always been peaceable, and their children today is still among us on this side.

419 Q. Was there any other reason that kept them friendly?

A. It seemed like my people were born in peace. That is all that I can say. As far as I know they were born in peace, and they kept in peace as far as I know.

Q. When was the last time that he was down to Three Mile Rapids or Wah-sucks? Not to fish, but to observe and see.

A. You mean how many years ago?

Q. Yes.

A. About 10 years ago I was there last and fished and seen some people there, some of the Indians.

Q. Did you fish yourself that time?

A. I did, yes. I got salmon there what I wanted and returned home.

Q. That is to the reservation?

A. Yes, he returned to the reservation.

Q. When was the first time you fished there?

A. I have fished a good many times in my younger time, of course.

Q. What years were those, or about how many years ago?

A. He says that I hardly remember exactly, but I think 14 or 15 years ago, I think was the last time that I was there.

Q. Last time. How old is he?

A. He says that I found out that I am 54.

Mr. Bennett: 54 or 64?

A. 54. He has found out that he is 54.

Q. How did he find it out? What does he mean by finding it out?

A. There was an old woman knew me when I was born, and she told me that is about my age.

Q. A white woman or an Indian woman?

420 A. An old woman, an Indian woman knew when I was born.

Q. What was the first time that you fished at Wah-sucks?

A. When was?

Q. Yes, about how old was he?

A. I hardly know the exact years, but, he says, I have told you that I was there along about 14, or something that way, 14 years. He says my mother was still alive at the time, but I hardly know the exact time when I was there first.

Q. Now, I want to know how old he was when he first fished there?

Interpreter: Well, that is what he said, he don't hardly know.

Q. I thought he was speaking of the last time.

A. He don't hardly know.

Court: How large was he when he fished there first?

A. I was a young boy then. My parents was both living. I was quite young when I first fished, but I don't know the exact years.

Q. What, if anything, made Wah-sucks an important fishery?

Court: Kum-sucks. You better give it that way.

Q. Kum-sucks?

A. He says that this place that you have asked about has been their native land. No doubt that you know that that has been their native land, and that piece of ground was dear to them because it furnished the Indians with fishing points when it was high, when it was low; and the Indians that lived in the past before my time, and before the time of the ones that I am telling about away back, they recognized that place as their dear spot right there.

Q. What does he mean when it was high? I don't understand that?

A. There is various places perhaps that the white man don't know that fishing points been hid away yet, that they don't know anything about. When water is low there is places where they used to fish. The Indians knew it, and as the water came up, why, it fitted other points with high water, and so on. There is other fishing places yet that whites don't know anything about.

Q. Is that at Wah-sucks he is speaking about?

A. Wah-sucks and Kum-sucks were place that we were brought up to know where the earliest fishing points was.

Q. Now, you spoke of living at Skein. How did they get from Skein down to Wah-sucks?

A. He says, interpreter please interpret right. I said this Wah-sucks was the first fishing place—the earliest fishing place—is why I came down there to fish. Tell the people that is why we came down there and left the other.

Interpreter: He is getting after me now.

Court: How did they get across the river?

A. He said, we used to get our canoes from the other side, come down as far as we could with canoes, and then walk balance of the way down to fishing points.

Q. Did they have any well-known crossing places?

A. He says, yes. I know all the crossing places and landing

places from where I was raised, from where I was born—he says, I know from there down on down to where we used to cross; and I have got the canoe now there at home on the river, the kind of canoe that I used to use when I had to go backwards and forwards from the other side over to this side and so on.

422 Q. Where are those places?

A. One crossing was right opposite of Skein, called Ashmun, which means flea in Indian terms. The flea crossing. I would cross there and then walk down on the Oregon side down this way, come by land. That is one crossing. Another place, he says, that we crossed used to be across there above Tenino, and came down the river on to Tenino and tie our canoes there, and what we didn't want to pack down to the fishing, we would leave there with our canoes. Land at Tenino, the upper part of Tenino.

Q. Any place else?

A. There was across on the Washington side, below Wishham down, there was a crossing place there called Nuchtas. There was a big eddy there, and from that point they used to cross on the Oregon side.

Q. What does Nuch-tas mean?

A. He says, that I am not able to tell you what that is. The old people knew what Nuch-tas was, but the younger Indians don't know what that meant.

Q. Were there any other crossing places below that?

A. There was another crossing below Nuch-tas, and then the last crossing was a little below Kum-sucks.

Q. A little bit below Kum-sucks?

A. Yes, a little bit below Kum-sucks. There are three crossing places that I know of. From Nuch-tas, and there was another little crossing there between Nuch-tas and Kum-sucks at low water.

Q. Now, when they crossed and fished at Kum-sucks, and got their fish, what did they do with the fish then?

423 A. He says we caught salmon, and cut them up and dried them, and put them in various different—put them up different ways. We had different ways of putting up salmon. Not only to dry them, but we had different ways to put up salmon.

Q. Where did they put them up?

A. Well, we took it home, we packed it on our backs up to Tenino, where our canoes were.

Q. Did they ever prepare any at Kum-sucks or Wah-sucks?

A. I believe I have already said that we cooked our fish at Kum-sucks and Wah-sucks and dried them there, and took them to our canoes at Tenino.

Q. Dried them there?

A. Dried them there, and took them up to our canoes.

Q. Now, whereabouts from the fishing bank did they have their drying place?

A. We had our drying place in various places. We put up a scaffold and made a flat roof to dry our salmon under the shade, different places; we didn't have no particular place, but we have different places away from the river.

Q. What was this scaffold for drying, what was that made of, and how did they make it?

A. He says the women folks always cut different kinds of reeds and tules out of swamps, and dried them, and wove them together and made mats. He says they made the mats to put over the salmon, and they were woven mats that went over the salmon, and the salmon dried underneath here.

Q. Were the salmon on the ground or on a platform?

A. We always had small poles that we used to gather up in the mountains, away back in the mountains, small fir poles, straight fir poles—we would go back in the mountains and pack those poles
424 them. We used to have poles that we dragged from the mountains that lasted for years and years, and we used them always for drying. We put up a scaffold for these poles.

Q. Just one thing I wanted to understand. He hasn't answered it yet. Did the salmon rest on top of these poles, or on the rocks and ground underneath?

A. The salmon was never put down on the ground to dry. These poles that I spoke of, they made scaffold out of them, and they laid the salmon on top of the poles to dry. They never dried on the ground.

Q. Did they lay on the mats that they made of reeds, or were the mats of reeds laid over them then?

A. He says that we put the shade over them and fixed the poles under the shade, and put the salmon over these poles, and the salmon would dry in the shade, and not on the mats at all.

Cross-examination.

Questions by Mr. Bennett:

Ask him, when they crossed down about Kum-sucks—is that the right name?

A. Yes, Kum-sucks.

Q. Kum-sucks. Ask him how they got their boats back up to Skein?

A. Our canoes up at Skein we used just there, and the canoes down below were left there to cross backwards. We never took them up there and brought them away down here at all. We had canoes at each place.

Q. Ask him if he claims that he had canoes down there opposite Kum-sucks, down there on the other side from
425 Kum-sucks.

Interpreter: Had a canoe?

Q. Yes. Ask him if he had a canoe or canoes down there.

A. He says the people of Wish-ham always had a canoe there to cross below Kum-sucks, always had a canoe there. There was a canoe there all the time for any one who wanted to cross, why they crossed on it.

Q. Ask him who he claims that canoe belonged to?

A. No doubt but what you white people remembers this name Colwash. Colwash was a chief of the Wish-ham, and he had canoe there all the time for his people or anybody else that wanted to cross. Colwash was a known man by the Indians and the whites. He was a very large man—very large.

Q. Ask him if there was just one canoe down there that belonged to Colwash, or if there were many canoes.

A. He says, there is times that when people came there maybe they had a canoe besides the one that is there—maybe another party might have a canoe; but as a rule there was a canoe there steady; one canoe had to be there all the time.

Q. Ask him how many is the most canoes he ever saw there at one time.

A. He says, there was one big canoe at Kum-sucks, a little below, and there was two canoes up to Nuch-tas, besides the one that I spoke of below Kum-sucks.

Q. At the Big Eddy?

A. Yes, below down at Kum-suck, there was one there, and there is two further up the river, and one on Kum-sucks side; four in all.

426 Q. Well, does he say that these other two were in the Big Eddy?

A. At Nuch-tas, yes, further up.

Q. Is that the Big Eddy?

A. The Big Eddy on the Wish-ham side. Then there was another canoe a little below Kum-sucks. That is three. Then there was another canoe on the Oregon side, at lower end of Kum-sucks. That made four.

Q. Altogether?

A. Yes, two above.

Q. At Big Eddy, and two down at Kum-sucks?

A. Yes.

Q. Now, ask him who the boats up at the Big Eddy belonged to?

A. Seelatsee furnished the other two boats.

Q. Who?

A. Seelatsee—he was the second chief. Seelatsee, the father of the present Seelatsee here. He furnished the canoes up there, and he was the second chief.

Q. Where did he live?

A. He lived on Washington side.

Q. Ask him what kind of canoes these were.

A. He says, tell the friends that the canoes some of them was bigger and some was smaller. They were made out of pine tree.

Q. Ask him if they were what they call dug-outs.

A. Yes, sir. He says yes. Sometimes it will carry five Indians, sometimes ten.

Q. What say?

A. It would carry from five to ten Indians at a time, some of them, the largest ones.

427 Q. What I asked him was whether they were dug-outs or not.

A. Yes, he said they were dug-outs.

Q. Now ask him when he claims to have last seen those boats along there.

A. I hardly know the exact number of years, but I have seen those canoes not very long—many years—back. I have seen them, as I have lived there and brought up, and I have seen those canoes there, but I cannot tell you the number of years.

Q. Ask him if they were left there the whole year around?

A. They were left there all the time; whenever at high waters, they were drug clear out away out on the bank, where they would be safe from being floated away. They never were left in the water, especially this time of the year, because on account of the ice.

Q. Ask him if there were any Indian villages in his time below Wish-ham.

A. He says, yes there was, there was different villages along down on the Wish-ham side. There was places there that I can mention if you want to know who and where they were, there was different villages along on the Wish-ham side.

Q. Ask him how far it was from Wish-ham down to the next village in his time.

A. He says that these places where the Indians lives, perhaps they might be a quarter of a mile apart or further. This Suey-pum was one. He says he is well acquainted with where there was one village where they used to fish and dry salmon, and these other two that he mentioned. There was different little villages.

Q. Which one did he say he was well acquainted with?

428 A. Suey-pum was one little village.

Q. Ask him how far it was from Wish-ham down to that place.

A. He says, it was something like a quarter.

Q. A quarter?

A. Yes, a quarter or further.

Q. Ask him if in the early days there were eight different bands of the Skein Indians.

A. You are right. There were that many people, different tribes.

Q. Ask him if they had villages all the way up to the mouth of the Yakima along the Columbia River.

A. The Indians doesn't exist so far as that—don't live clear up to the place that you have mentioned. They don't run up that far now at the present, but they did in the past; but they don't count as many in number now as they did. Same way on the Oregon side.

Q. Now, ask him if the Skein Indians in the early days claimed the country along the Columbia River on the north side from the mouth of the Yakima down to the narrows, to The Dalles—down to the narrows of the river?

Court: You mean Big Eddy?

Mr. Bennett: Well, yes, down to Big Eddy. I think that will cover it.

Q. Ask him if the Skein Indians claimed the country along the Columbia river on the north side all the way from the mouth of the Yakima down to the Big Eddy.

A. There is two big eddies there, Judge, Nuch-tas and Til-mich-tich. Which eddy do you mean?

Q. I will show you. I cannot call those Indian names, so I will have to show you. You know the map here, don't you?

Interpreter: Not well, no, but I will try and see it.

429 Q. Can you locate this big eddy? Do you know where that is?

A. I will put my helpers on (glasses). I am not accustomed to this map. Now, where do you mean?

Q. Here. This is Memaloose Island—one Memaloose Island; and this is the Big Eddy, and here is the mouth of Five Mile Creek. Here is Seufert's cannery, and here is where the opening of the canal is, in here somewhere now—the mouth of the canal. Now, this is the Big Eddy that I am asking you about.

A. On the Washington side or the Oregon side?

Q. On the Washington side.

A. That is Nuch-tas. That is what you mean, I suppose. That is Big Eddy on the other side.

Q. You can explain it to him, but what I want to know is, if the Skein Indians claimed the country in the early day on the north bank of the Columbia River from the mouth of the Yakima down to the Big Eddy.

A. Now, at your question I will say this. The Skein people didn't run clear down to this Nuch-tas.

Q. Didn't run down what?

A. They didn't come down to this Big Eddy, Nuch-tas. They didn't claim down that far at all.

Q. I know. That is what I thought.

A. He said the Wish-ham claimed that little spot from Nuch-tas up to Skein, and from Skein the Indians that he is from claimed up above.

Q. Clear up to the mouth of the Yakima?

A. He says it is hard for me to tell you the story and make it plain to you as to how many Indians and what Indians there were living in that time, because you could not understand where nor who to satisfy you perhaps by my story; but I have told you that these Skein people lived at certain place and the Wish-hams certain place.

430 Q. Tell him that all I want to know is whether the Skein Indians claimed the country from Skein up to the mouth of the Yakima on the north side of the river in an early day.

A. He says, yes, that is just the way it was, they claimed up and down from Skein on up, clear up to the points you spoke of.

Q. To the mouth of the Yakima?

A. Yes, and even a little further above there was a tribe in there that were counted in among the Skeins.

Q. Now, ask him when they crossed the river at Skein to come down to Kum-sucks, whether there was a road for them to travel on.

Interpreter: What tribe?

Q. Well, when he and the Skein Indians crossed the river at Skein, as he says they did, to come down to Kum-sucks, ask him whether they had a road to travel in.

A. When the people of Skein had to come down to Kum-sucks, they got in their canoes and come on down the river as far as they could, and landed at Tenino. There they left their canoes and went on foot on the trail.

Q. Ask him if he knows ten mile rapids.

A. Not—I am not white man enough to know that.

Q. Ask him if there is a rapids between Skein and Wish-ham—between Skein and Tenino. Ask him if there is a rapids between Skein and Tenino.

A. He says there is a little rapids below between Tenino and Skein, there is a little rapids below Skein.

431 Q. Ask him this question, if the name of his tribe is Skin-pah.

A. He says, yes, that is the name of my tribe.

Q. That is the right name?

A. The Skein tribe.

Q. Now, ask him how they got through that rapids with their boats between Skein and Tenino.

A. He says there was a point where we crossed with the canoes there just above this Nu-cla-na-cla country, this little falls, and there was a point where they used to cross, a little above this little fall was a place where they used to cross. He said there is a little slough comes in from this side, and they used to cross there above this second fall.

Q. Ask him how far this place that they used to cross was above Tenino.

A. Oh, it is quite a piece, a long ways.

Q. Then they didn't come down to Tenino, but only down to this rapids?

A. He says, to tell the friend that we used to follow the channel, after we got across above this little rapids, we passed it, and we have a channel where it is safe, we could go around it and float down to Tenino, and then on down afoot.

Q. Ask him if that channel was on the north side of the main river.

A. I used to cross around on the north side, and float on down to the little Memaloose Island, and then down to Tenino.

Q. Then they could not come right down through the rapids.

432 A. It is impossible to cross it when it is certain stage, but when it is full why they could come down it, but when it is low nothing could come down in the shape of a canoe.

Q. Ask him if there was any road from Tenino down to Kum-sucks.

A. There was a trail upon which we traveled, and that trail was used in the past, no telling when. That trail has been always where we went down from Tenino up and down to Kum-sucks and back.

Q. Ask him if there was a wagon-road any part of the way in his time.

A. He says, there was no wagon-road away back till Mr. Seufert took possession there, and then there was a wagon-road made.

Q. Ask him if he remembers when Mr. Seufert came there.

A. Why, he says, I have not kept track of Mr. Seufert's time when he came. I know he came, but I don't know when exactly, as to what year, or what month, or anything about it.

Q. Ask him how old he was when Mr. Seufert came.

A. I do not know when it was exactly, the exact years, but all I can say I was a married man at the time when Mr. Seufert come, but I don't know his exact years.

Q. Ask him how they got across Five Mile Creek.

A. There was always a foot-log of some kind across the Five Mile.

Q. Ask him if that was so as long as he continued to go down there; ask him if the foot-log was there as long as he continued to go down there.

A. Yes, he says, that there was a foot-log as long as we
433 traveled up and down the river afoot. When one foot-log washed away by the high water, why somebody would put in another one. There was a foot-log there all the time.

Q. Now, ask him if down there at Kum-sucks there were lots of channels through the rocks where they could catch fish.

A. The only gap or channel that I know of, is the one gap; at that little high water, it run clear through, that is south of Kum-sucks and Lone Pine, next to the hills. The river divided that part off the other way; but Kum-sucks fishing place was down further out into the river.

Q. Ask him whether the fishing place at Kum-sucks was in this channel or out in the river.

A. I have been trying to tell you that this fishing place Kum-sucks is out into the main river, not in this channel next to the bank this way.

Q. They never fished in the channel next to the bank?

A. No. Indians never know any fishing points on that slough or channel.

Q. Ask him if the Indians each had a fishing place that they owned.

A. It is not altogether that the fishing points was owned by any particular one. People fished any time they want fish at any point; even there was nets were placed there, tied there, whenever any one come, made no difference, they could take the net and get what salmon they wanted. One didn't own any particular point that I know of.

Q. Ask him if he didn't claim to own a fishing point on the island there by Skein, and if he didn't rent it out to other Indians and let them fish there, and then divide the money with him.

434 A. Not of my knowledge had I ever done so. He says that the fishing points were free, as I have said different times since I was brought here. People went there and fished, and they got and went off; and even nets were tied there, and any one that come along that wanted fish, they fished, and no one said anything; no one asked for pay and no one paid anything.

Q. Ask him if he fished there on the island and sold his fish.

A. Yes. He says, now understand me, when I caught the fish on the island, there was a person come to me, "You have got to sell those fish." I said "Why?" "Well, you have got to sell them. If you don't, you will never come here to fish no more. Do you hear that? You have got to sell those fish." Well, what was I to do. I says, "All right. If I can't get out with the fish I have caught, of course I will sell them." I was pretty near compelled to sell my fish.

Q. Ask him if he always fished in the same place.

A. Where?

Q. On the island.

A. He says, I belonged to that place, my people belonged to that, and I have always felt that I had the right to catch fish there at that island. My people away before me fished there. Of course I naturally felt that I had a right to the place.

Q. Ask him if he and his people always fished there in the same place.

A. He says, it is just like the other fishing points. Indians came and fished and took away what they wanted. And that is
435 just the way this island was to us in my time and before.

Redirect examination:

Q. Who compelled him to sell these fish at the time he speaks of? I want to know about that.

A. Why, friend Seufert is the man that I mentioned, he was the one that told me that this thing wouldn't do. "You have got to do just what I say."

Q. Who was that?

A. Seufert—Mr. Seufert.

Q. Frank Seufert?

A. It is the old gentleman. And I sold them to him for a cent. He would not give me what I wanted, but he would only give me a cent. And I sold the fish to him all the time whatever I got.

Court: That means a cent a pound?

Q. When was that?

A. A cent a pound, yes. Now, he says, it was about the third year after Mr. Seufert took possession below this occurred, and he told me "You will have to sell me your fish, or else you cannot fish here no more." I wanted to catch fish for myself, for my own use, but he says, "No, you will have to sell them to me or else you cannot fish here."

Q. Did he after that have any similar conditions or circumstances or occasions?

A. One time that he talked that way to me, as I have already stated, and he said the same things over to me different times. He told me, "You have got to let me have the fish, or else you will have to get out of this. I won't let you stay here."

436 Q. Now, does he know of his own knowledge—seen other circumstances or other conditions like that with other Indians, between Mr. Seufert and other Indians?

A. I am not exactly, understand me, that I am speaking for anybody else. I am only speaking just what occurred with me and Mr. Seufert. Of course I have heard of other things, pretty near about the same thing, but I have only just stated what words passed between I and Mr. Seufert.

Q. How did they cross—did they cross Five Mile any other way than by foot-log?

A. There were two ways of crossing the Five Mile. When on the canoes they would cross down at the mouth of the Five Mile with the canoes; but by foot they would cross the foot-log.

Q. And how near was the canoe crossing to the foot-log crossing?

A. I hardly know. It is not far. Not very far.

Q. He has testified to Indian villages on the north side. Did he see any Indian villages on the south side of the Columbia?

Interpreter: Seen Indians on the south side?

Q. No, any Indian villages. He testified to Indian villages on the north side—Washington side. Now, I want to know if he saw any on the south side.

A. He says, I have seen the Indians on the Oregon side, and if anything more must be said I am willing to say by the word of truth.

Q. That is all right.

A. And as long as you want to ask me questions, I will sit
437 here and tell you the whole thing.

Q. Tell him to just answer my question. I want to know if he saw any Indian villages on the south side of the river.

A. That is what he said he did.

Q. Oh, he did?

A. Yes.

Q. What were the names of those villages?

A. The leading man was Gush-hila.

Q. Did he have a white man's name?

A. No, he died before he had white man's name.

Q. He died before white man gave him a name?

A. Yes.

Q. What was the village called there, the name of the village?

A. Which point do you speak of? There is various places where Indians lived. Now, what place do you speak of?

Court: Ask him about Kum-sucks.

Q. What was the nearest village to Kum-sucks?

A. There was a little village above Kum-sucks, up the river like, and then there was another little village close by on the south side, where it was open and grassy, plenty of grass.

Q. What were the names of those villages?

A. He says the leading men that I will mention was Low-liss and

Alex-zan, used to have villages there. I have named the leading men of the tribe.

Q. Ask him if the villages had names, which he doesn't remember.

A. He says that I am speaking of these four different villages of the Wascos.

438 Q. Four different villages of the Wascos?

A. Yes. The leading men which I have mentioned were from those villages.

Q. I just want the names, or to know whether or not they had names.

A. Yes, they had names.

Q. They had names. Does he remember them?

A. That is the name, the Wascos. Yes, I have given you the names of the leading men of the Wascos.

Recross-examination:

Q. Ask him how far it was from the canoe crossing of Five Mile Creek to the foot-lot.

A. I hardly know. It might be a half and might not, a half mile. It might not be a half mile, but something near that. It is either half a mile or a little bit less, he thinks.

Q. Ask him if his name up there on the island is Lawyer.

Interpreter: What?

Q. Ask him if his name up there on the island is Lawyer. Ask him if they call him lawyer up there on the island.

Interpreter: Him?

Q. Yes.

A. I am not exactly lawyer, but then I was made the head man by the people there.

Q. Ask him if they call him lawyer.

A. Yes, the white people calls me doctor-lawyer, and the Indians call me by my regular name, Shea-wa.

Q. Ask him if the fish that Seufert would only give him a cent a pound for were blue-backs and silver-sides in the fall run, in the late fall run.

439 Interpreter: The fall run, you say?

Q. Yes, the fall run. Silver-sides and steel-heads.

A. He says I have let him have salmon that I got in the month of July; not fall.

Q. Ask him if Mr. Seufert didn't pay him five cents a pound for part of his salmon.

A. He has the last two years, he has paid five cents; paid others.

Q. What say?

A. He paid others five cents the last two years.

Q. Ask him if he didn't pay him five cents for part of his salmon.

A. No.

Q. What say?

A. He says, he never paid me five cents, but the others got five cents. That is what I was told—they got five cents a pound; but I didn't sell any salmon to him.

Q. Ask him if he didn't put up all the fish that he wanted for his own use before he sold any to Seufert, always.

A. No; I have never done that, no. I never got fish all I wanted and then give my time to Mr. Seufert for his fish, because I have never had the privilege. In fact, I have trade more or less with other Indians from different parts of the reservation when they come for salmon.

Q. Ask him what did he say about the other Indians.

A. I have made various trades with other Indians from different parts when they come for salmon.

Q. Ask him if he traded salmon to other Indians.

A. Yes, I have said I did.

Q. Ask him if he didn't put up any salmon at all for himself.

440 A. Oh, I put up some salmon for myself—some.

Redirect examination:

Q. At the time that he was catching these fish and Mr. Seufert talked with him, what kind of fish was he catching at that time—blue-backs and silver-sides, or salmon?

A. It was the very best salmon; the very best salmon; salmon that runs right after July, the month of July.

Recross-examination:

Q. Ask him if Mr. Seufert lets the white men fish up there at all?

A. He has different places let the white people get salmon, but on the island he never allowed any of the whites to get salmon at that island.

Q. He never allowed any whites to dip salmon at the island?

A. No. Only up above that he allowed the whites to get salmon.

Excused.

441 CHARLEY DICK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Louie Brown sworn as Interpreter.

Direct examination.

Questions by Mr. Rankin:

— Where do you live?

A. Yakima.

Q. How long have you lived there?

A. Nearly thirty years.

Q. Where were you born?

A. At Wah-sucks, where I was born.

Q. At Wah-sucks?

A. Wah-sucks.

Q. How long ago?

A. Well, I am over sixty years old.

Q. You mean born in Oregon at Wah-sucks, or across the river?

A. On this side.

Q. Are you allotted on the Yakima Reservation?

A. Yes.

Q. What does Wah-sucks mean?

A. There used to be a pine tree stood there. That is why they called that place Wah-sucks.

Q. What was Wah-sucks noted for?

A. The people used to live there in early days to catch fish.

Q. Where did they catch fish at Wah-sucks?

A. Why, right straight down from Wah-sucks, place called Kum-sucks.

Q. Kum-sucks?

A. Yes.

Q. How many fishing places at Wah-sucks?

A. There is one large place there where the people used to dip that I know.

Q. How many people dipped there?

Interpreter: What do you mean?

Q. How many tribes dipped there?

A. Oh, different tribes.

Q. What were their names?

A. One tribe is Wasco, and the other tribe is Wish-ham; and the Yakimas also. And different other tribes that lives near there.

Q. Were they friendly or not?

A. They were all friendly.

Q. What made them friendly?

A. They were friendly because they were married into one another's tribes from both sides of the river.

Q. What language did they speak?

A. The Wasco tribe and the Wish-hams speaks the same language. The Yakimas is a different language.

Q. Can they understand each other, the Wish-ham and the Yakima?

Court: The Wasco, or the Yakima, you mean?

Mr. Rankin: Well, he testified that the Wish-hams and the Wascos speak the same language.

Court: I thought he said Wasco and the Yakima.

Mr. Rankin: No, he said Wasco and the Wish-ham speak the same language.

Q. Ask him do the Wasco and the Wish-ham speak the same language.

A. Wish-ham and the Wascos both speaks the same language.

Q. And can the Yakima understand the Wish-ham?

A. The Yakima speaks a different language from what

443 we do, but we can understand them. We talk their language.

Q. How did they fish at Kum-sucks?

A. With a dip net.

Q. Why with a dip net?

A. Know him quite a while.

Q. Have you ever seen either of these men fish there?

A. Yes, sir, I have seen Sam Williams fish there about twenty years ago. Peter Jackson. Wasco Charley.

Q. Peter Jackson—how long has he seen him fish there?

A. It has been since that I saw him.

Q. Since that?

A. Yes.

Q. He spoke of Wasco Charley.

A. I saw him fish there also.

Q. You are speaking of Wah-sucks, are you?

A. Yes, Wah-sucks is where I mean.

Q. How did these men first fish when they fished there?

A. These three men that he just spoke of?

Q. Yes. How did any of these three men first fish when they fished at Wah-sucks.

A. The first I saw Sam Williams fish there he fished with a dip net and a gill net. Just below this dip stand at Wah-sucks, after the water went down, that is where I used to see him set his gill nets; not at the dip stand but just below the dip stand.

447 Q. Just below the dip stand?

A. Just below the dip stand.

Q. Have you seen him fish there in late years?

A. Last time I saw Sam Williams fish there, I saw him fish with a fish wheel.

Q. When was that?

A. I could not tell you just when I saw him fish there, or what year, because I am a man has no education and never paid much attention to anything like that. It might have been three years and it might have been five years. I could not say.

Q. How many years did he see him fish there with a wheel? Put it fishing seasons.

A. Perhaps it might have been about two years that I saw him there fishing with a fish wheel.

Q. He testified that the tribes were friendly, I believe. Why were they friendly?

A. As I stated before when you asked me about this question how they got along nicely. Now, for instance, take me: I am part Wasco and part Wish-ham. That is why we all got along nicely, because we were related to one another.

Q. What tribe did his father belong to?

A. Wasco.

Q. And what tribe did his mother belong to?

A. Wish-ham.

Q. Do you fish at Wah-sucks now as you used to?

A. No, I don't fish there any more.

Q. Why not?

A. I have not seen anyone fish there here of late years.

Q. Why don't you fish there?

A. I have heard that Seufert did not allow any one to go there and fish, and I thought I had no business to go there alone

448 to fish, to try to fish. Last summer I came to Five Mile, wanted to see my relative Mrs. Gulick. When I got to that gate there, where we always used to go in to go to Wah-sucks, I found it was locked. I saw white man standing there; the house was there; and I asked him if I could go in. He says, "No sir, you cannot go in." Well, I says, "I have got a wild horse here, and I would like to put him on the inside where he wouldn't get frightened of the train—he might get cut up on the wire;" And this white man says "No; Seufert don't allow any one to come inside, and if you want that horse tied up, you tie him up out here in the road."

Q. Does he mean Five Mile or Three Mile?

A. The road that I have reference to that goes down towards Wah-sucks; old Indian road.

Cross-examination.

Questions by Mr. Bennett:

— Ask him how long after he was born, he continued to live at Wah-sucks?

A. I could not say just how long, but I was quite a good sized boy then, lived there.

Q. About how many years old was he when he left Wah-sucks?

A. I was pretty good sized boy, a young man; when my father died then I went down to the Cascades.

Q. Ask him if he was half-grown when he left there.

A. I might have been ten years old, and I might have been older.

Q. Ask him how long he lived at the Cascades.

A. I didn't live there very long; stayed there a while and then I would go back up again; right along that way.

449 Q. Ask him if he lived down there a year before he went back up again.

A. I might have stayed there a year; might have stayed two years.

Q. Ask him how many times after that he went down to the Cascades.

A. Yes, sir. I have come down and went back again.

Q. How many times?

A. I could not tell you.

Q. Ask him when he quit living at the Cascades.

A. About a number of years.

Q. Ask him about how many years ago he quit living at the Cascades.

Interpreter: Do you mean how long he quit living there, or quit coming?

Q. Yes, how many years since he quit living there.

A. Well, I could not tell you how long since I left Cascades, but I have been there and I have been up to Wah-sucks and I have been different places; then when I quit running around then I go back up there and stay there. But as far as telling you when I left there, why, I could not tell you.

Q. Ask him if he lives over on the Reserve now?

A. Yes, sir.

Q. Ask him how long since he went over there to live.

A. Perhaps twenty years or a little better; perhaps twenty-five years.

Q. Ask him if he moved there from the Cascades. Ask him if he moved over on to the Reserve from the Cascades.

A. I moved from Wish-ham.

Q. From Wish-ham over to the Reserve?

A. Yes, sir, from Wish-ham.

450 Q. Ask him if he fished down at the Cascades.

A. Yes, sir, I fished there. Whenever I was down at the Cascades and fish there during the fishing season, I fish on both sides of the river there.

Q. Ask him if he claims a right to fish there just the same as up at Kum-sucks.

A. Not only at Kum-sucks or Cascades that we felt we had that right to fish on each side of the river, but all along the river.

Q. Ask him if he claimed to have that right at the Cascades.

A. Yes, sir, I felt as though that I had that right.

Q. Ask him if they claimed that the Yakima Indians had a right to fish up on the Deschutes River.

A. They claimed that they had?

Q. Yes. Ask him if they claimed that the Yakimas had a right to fish up on the Deschutes River.

A. As far as me telling you that the Indians had right to go to the Deschutes River, because that is something that I don't know anything about.

Q. Ask him if Sam Williams and Wasco Charley were fishing at this place when he first knew it, when he first remembers it.

Interpreter: Which place is this place?

Q. Kum-sucks.

A. Yes, sir, I saw him there.

Q. When he first remembers the place, eh? Ask him if that is when he first remembers the place—if they were there when he can first remember it? Is that what he says? Ask him if they were there when he can first remember.

Interpreter: Oh, that was not the question you asked first. I told him just as you asked him.

451 Q. All right. Ask him that.

A. When I first could remember I didn't see Wasco Charley and Sam Williams. There were other people when I first knew the place. As I said before, it has been about twenty years ago when I saw Wasco Charley and Sam Williams fishing there.

Adjourned until 10 A. M.

PORTLAND, OREGON, January 26, 1916—10 a. m.

CHARLEY DICK resumes the stand; Louie Brown, interpreter.

Cross-examination.

Questions by Mr. Bennett: I want to ask the Interpreter a question to go in the record.

Court: Very well.

Mr. Bennet: In what language are you talking to this witness?

Interpreter: What language?

Mr. Bennett: Yes, the language of what tribe?

Interpreter: Well, it is the language of the Wasco and the Wish-ham.

Q. Now ask this witness if he can talk English.

A. I can talk some English, but not very good.

Q. Ask him if he could understand what I said when I asked him if he could talk English.

452 A. I understood what you said, but come to talking right along to me, maybe a long conversation, why, I could not meet you. I might take up too much time.

Q. Do you know where Three Mile Creek comes in there by Wah-sucks?

A. (No answer.)

Q. Ask him if he could not understand what I said.

A. As I told you a moment ago, that I cannot understand you very well. I have an interpreter here to interpret what I say.

Q. Charley—you understand that? You understand your name?

Court: Charley, answer him if you can direct, without the Interpreter.

Q. Do you know Three Mile Creek?

Court: Tell him that the Court orders him to answer him direct, without an Interpreter.

Interpreter: Do you want me to translate that?

Court: No, I don't want you to translate it.

Interpreter: That is just what I was asking him, if I would translate it, and he said no.

Mr. Bennett: May he translate it?

Court: Yes.

A. He said, there would not be hardly any use for me to start in talking English, for after a while perhaps I would get so I could not understand what he would be saying to me. Part of the words I could understand, and other parts I could not.

453 Court: Tell him to try it a little while.

Interpreter: He says he don't want to undertake to try it, because he know he would make a botch of it.

Mr. Bennett: I want to ask him one or two more questions along this line with reference to another purpose.

Court: Very well.

Q. Do you know Three Mile Creek?

Mr. Bennett: Now, ask him if he understands my question. Don't tell him what I said, but ask him if he understands my question.

My question was, do you know Three Mile Creek, but you need not translate that to him, but ask him if he understands what I said.

A. Yes, I understand.

Mr. Bennett: Now, tell him to answer that question in English, if you will. What does he say?

Interpreter: He says, I could not tell him very correctly.

Mr. Bennett: All right.

Q. Now, you ask him if he knows Three Mile Creek.

A. I suppose the place that you have reference to, Three Mile, is what we would call Wick-ut.

Q. Ask him if that is what they call the creek.

A. That is the name of the creek in Indian, is Wick-ut.

Q. Ask him if that creek comes down from the hills and runs across into the river.

454 A. At this time of the year it does not empty into the Columbia River; it runs into a slough first, then into the river.

Q. Now, ask him if it comes down from the hills and runs into the slough and then into the river.

A. Yes, sir.

Q. Now, if he was going down that creek from the hills toward the river, would the place where he was born be on his right or on his left. You can explain to him what right side and left side means. He understands that, or you can make him understand that, can you?

Interpreter: Yes.

Q. Well, now ask him if he was coming down that creek towards the river, would the place where he was born be to the left of the creek or to the right of the creek?

A. If I was coming down that creek and got down to this slough, I would be on the right hand side of this creek where I was born. The slough runs on down into The Dalles and empties into the Columbia River.

Q. He means that where he was born would be on the right hand side of the creek? I don't understand that exactly. Is that what he says—that the place where he was born would be on the right hand side if he was coming down the creek?

Interpreter: Yes, that is what you asked him, which side he would be on from where he was born, whether he would be on the right side or the left side.

Q. Yes, the place where he was born. Not he, but the place where he was born, whether it would be on the right hand side or the left hand side.

A. Well, I was born on the right hand side of this creek
455 that comes down.

Q. Ask him if he claims to have been born on the island between the sloughs and the river.

A. Well, it is an island at times, and at other times it is not an island, where I was born.

Q. Now ask him where his mother got water in the summer time when they lived at that place when he was a boy.

A. In the summer time when the river is high, she used to get water from both sides from the river and the slough.

Q. Now ask him if it was in those days when he claims they had a dry-house, a big long dry-house down there.

A. Yes, sir; I have seen the dry-house there.

Q. Ask him when was the last time he claims to have seen the dry-house there.

A. Last time I remember seeing the dry-house there, about twelve or thirteen years ago. It was small dry-house then.

Q. Ask him about how long the dry-house was.

A. It was a small dry-house, not very large.

Q. Well, about how long?

A. It was not any longer than from where I sit to where those chairs are.

Mr. Bennett: How far is that, Mr. Rankin, in your judgment?

Mr. Rankin: Well, my judgment is poor. I have given up measurement.

Mr. Bennett: Well, I thought maybe we could stipulate.

Mr. Rankin: What do you think it is, Judge?

Mr. Bennett: I think it is about 18 or 20 feet.

Mr. Rankin: That is satisfactory.

456 Q. Ask him if that dry-house was there all the time, from the time when he was a boy up to twelve or thirteen years ago.

A. Yes, sir, I have always seen that dry-house there.

Q. Now ask him how far it was from the place where he claims to have seen the Indians dip to the place where he saw them spear.

A. When the river is at the right stage they dip here, and when the river gets low, just below that dipping point there is a place where they spear salmon.

Q. Well, how far are these places apart? If he cannot tell in feet, let him show.

A. Well, I should think about as far as from here to where that man is sitting down.

Mr. Bennett: That is about 20 feet, is it, Mr. Rankin?

Mr. Rankin: Yes, I think so.

Mr. Bennett: It may be stipulated then that the distance he indicated is about twenty feet.

Q. Now ask him if that was a place where they could catch fish with a hook. Ask him if that was a place where they could catch salmon with a hook.

A. Where they spear?

Q. Yes, one of those hooks tied on to the end of a pole, you know. Not a spear, but a hook. Some of the witnesses have testified they sometimes caught them with a hook. Now ask him if that was a place where they could catch them with hooks.

A. No, sir.

Q. They never fished there with a hook?

A. No, sir.

Q. Now ask him if it was at about the same time that Sam Williams was fishing with a gill net and a dip net.

Interpreter: He don't seem to get that very good.

Mr. Bennett: What say?

Interpreter: I say he doesn't seem to get that very good. I will ask him again.

Q. Yes, ask him again. You understand the question, do you—whether it was about the same time Sam Williams was fishing with a dip net and a gill net, same years.

A. It was about the same time I saw him fish with a dip net, then I saw him fish with a gill net that same year.

Q. Ask him if that was the first time he saw him fish with a dip net.

A. Yes, sir.

Q. Now ask him if the Indians on the Reserve have talked a good deal together about this case.

A. We have never talked about this case.

Q. Ask him if he has talked a good deal with the other Indians about this case since he has been down here.

A. No, sir, we have never talked about it.

Q. Ask him if he has ever talked with you or Charley Pitt about it.

A. No, sir.

Q. Ask him if he knows Mr. Dorrington.

A. I know him; just got acquainted with him here lately.

Q. Ask him if he ever saw him out on the Reservation.

A. I saw him once.

Q. Ask him how long ago that was.

A. About a year ago.

Q. Ask him if he and Mr. Dorrington at that time talked about this case.

458 A. When Mr. Dorrington come to the Yakima Reservation he asked me if I know anything about this fishery, and I told him yes I know something about it. He says, "all right, I may call on you sometime." And that is all he said to me.

Q. Ask him if that was about a year ago.

A. Well, I could not say just exactly how long it was, but to my knowledge about a year ago.

Q. Ask him if he has talked with Mr. Dorrington about the case since he has been here in town.

A. No, sir. It seems to me that Mr. Dorrington is so busy here that he doesn't have much time to talk to me about anything.

Q. Well, ask him if he has talked to Mr. Dorrington since he has been here about this case.

A. No, sir.

Q. Ask him if he has talked to anybody about this case since he has been here.

A. Never talked to anybody.

Q. Ask him if he talked to anybody at any time about this case when they took a statement down in writing.

A. When I first come here Mr. Dorrington asked me what I knew about the case, and I told him what I knew about it.

Q. Ask him who else was present at that time, what other persons were there. Ask him what other persons were there at the time he was talking to Mr. Dorrington.

A. Oh, there was quite a few others was there.

Q. Tell him to name as many of them as he can. What others were there?

459 A. I don't remember who was there. I could not tell you just who they were.

Q. Ask him if there was any interpreter there.

A. Yes, sir, the interpreter was there.

Q. Who? You?

A. Right here, sitting right here.

Q. Ask him if Charley Pitt was there?

A. I don't remember seeing him.

Q. Ask him if there was a lot of other Indians there.

Mr. Rankin: Just a moment, your Honor. I am willing this shall go on. There is no question; we do not deny it; we have had these Indians down here, consulted with them; we have had it interpreted, taken statements from them. As Judge McGinn said once in his court, he would not give much for a lawyer who would not consult with his witnesses and find out what they would testify to.

Mr. Bennett: Are you willing to admit you got a bunch of Indians together and talked it over with them in a bunch?

Mr. Rankin: We will admit this much, Judge, that we had the Indians meet in the larger room and had interpreters there and called one at a time, and either Mr. Carr or Mr. Dorrington took their statements.

Mr. Bennett: In the presence of one, and in the presence of another?

Mr. Rankin: They were seated around the room. They talked with the interpreter about an hour. I would not say whether the others were there or not.

Q. Now ask him when he quit going there to fish himself—that is to this Kum-sucks.

460 A. About 13 years since I fish there last.

Mr. Rankin: Judge, I might add to that statement that at the time this session was had there, it was the very beginning of the case. That may be of benefit to you or it may be of benefit to us. I want the time fixed here though. It was when they first came here, the first day of the case they had the meeting.

Mr. Bennett: You don't admit you have talked with these Indians frequently, talked to them frequently in a bunch, since?

Mr. Rankin: No, we have not had them together since. Individually we have talked with them since.

Mr. Bennett: Only one at a time?

Mr. Rankin: Possibly one or two, as they happened to be in; but we have never had them collected in a bunch since and talked with them.

Mr. Bennett: I don't care to ask this witness, but it may be neces-

sary to ask some of the other witnesses some further questions along that line.

Mr. Rankin: It will be all right any time.

Q. Now ask him, the time that he went over last year and found the fence locked—the gate locked—where he crossed the river to get over there.

A. I crossed at the ferry at The Dalles.

Q. Now ask him if he ever found that gate locked before last year.

A. It used to be open, but for about two years I hadn't been there until last year when I went there, why, I found it locked.

461 Q. Ask him if that is the first time he ever found it locked?

A. It was the first time I saw it locked.

Q. Ask him if that was after Sam Williams and Mr. Seufert was having trouble about this place.

A. This was after Sam Williams and Seufert had this trouble.

Q. Now ask him how long he claims that fence had been there.

A. I could not say just how long the fence had been there, but it has been there quite a while. The Railroad Company put that fence in there to keep the stock from coming on to the track.

Interpreter: Do you want me to repeat what he said then?

Q. Yes.

A. He said the Company had two gates there so that Indians could go in and out to the fishery there.

Q. Now ask him if the gate that was locked was one of those gates?

A. Yes, sir.

Q. Ask him about how many years that fence had been there.

A. I could not say just how long the fence had been there. It was quite a while.

Q. Ask him if it was about thirty years.

A. I could not say how long it has been there, but it has been there quite a while I know.

Q. Well, ask him if he thinks it was as long as thirty years.

A. I don't hardly think it was thirty years ago.

Q. Ask him if he thinks it was twenty years.

A. It might have been twenty years, and it might have been less. I could not say just how long.

Q. Now ask him when he had this talk with this man at the gate if they talked in white man's talk or in Indian talk—if they
462 talked in English or in Indian?

A. I talked to him in English and made him understand about what I wanted and what I was talking about.

Q. Ask him if the man talked to him in English.

A. Yes, sir.

Redirect examination:

Q. He testified in answer to Mr. Bennett that he saw the dry-house there all the time. Does he mean all the time during fishing seasons, or all the time during the year?

A. Early in the spring, just before the fishing season commences,

they go to work then and make this dry-house, and after the fishing season is all over, why then they take it down and put it away again until the next fishing season.

Q. Now, at this time he was in the other room with the other Indians and the Interpreter, was he persuaded, or asked, or induced, or enticed to state anything but the truth about this matter?

A. There is no one talked to me about this matter, to say this or say that. I was asked questions, and what questions I knew I answered, and what I didn't know I didn't answer. So what I am talking about is just what I knowed myself.

Q. Ask him if he talked with Mr. Carr, the Superintendent of the Yakima Reservation.

A. I didn't tell Mr. Carr anything only what I knew was the truth.

Q. Ask him if he talked with Mr. Carr—not what he told him, but if he talked with him.

A. I never talked to Mr. Carr about it until I got here.

Q. Ask him if Mr. Carr asked him to tell anything but
463 what he knew about it.

A. Since we have been here Mr. Carr told me to not testify to anything only what I know was the truth, and that is what I am doing now.

Q. And is that what he has done all the time during his testimony?

A. Yes, sir, that is what I am doing now.

Excused.

464 J. H. JACKSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Where do you live, Mr. Jackson?

A. Jefferson County, near Madras.

Q. How long have you lived there?

A. About 10 years—12 years. 12 years.

Q. Where did you go from when you went to Jefferson County?

A. Went from The Dalles.

Q. Where were you born?

A. Missouri.

Q. What year?

A. August 26, 1832.

Q. When did you come west?

A. 1866.

Q. Where did you come to?

A. Salem.

Q. When did you first go to The Dalles?

A. Oh, I think it was 1868 or '69 the first time.

Q. What were you doing there?

A. I went to visit a brother I had there.

Q. When did you go there to stay any amount of time?

A. The summer of 1871.

Q. Had you been back and forth at The Dalles a few trips for short intervals prior to that time?

A. Prior to going there to say? Yes, sir.

Q. Prior to 1871?

A. Yes, sir.

Q. What was your business up there?

A. I was handling cattle from the Yakima.

Q. Where would you get the cattle?

A. On the north side of the Yakima River and along the Yakima River.

465 Q. What would you do with those cattle?

A. I was turning them off on a contract with the railroad.

Q. Where did you take the cattle to?

A. I took them to the Dalles, delivered them to my partner, Mr. Brown, and he delivered them here.

Q. How would you drive those cattle from Yakima to The Dalles?

A. Overland.

Q. In what years did you drive those cattle down?

A. In the spring of 1871.

Q. Any other years?

A. No.

Q. During the spring of 1871 did you see the Indians coming from the Yakima down to the Columbia and back?

A. Yes, sir.

Q. Any number of them?

A. A great many.

Q. What did they have in the way of foodstuffs, if anything?

A. I don't know. They had pack horses.

Q. Do you know what they had on them?

A. No.

Q. Do you know whether or not they ever took any salmon back and forth?

A. Back and forth, it was supposed to look, the packs, to be salmon—dried salmon. They had pack horses.

Q. Which way were they taking the dried salmon?

A. Taking them back to Simcoe, to the reservation.

Q. Did you have any property anywhere near the head of Three Mile or Lone Tree?

A. After that?

Q. Yes.

466 A. Afterwards, yes, in after years I did.

Q. What was that?

A. A slaughter-house.

Q. How long did you have that slaughter-house there?

A. Several years there.

Q. From about when to when?

A. Well, I think about the beginning of 1880 to 1885 or 1886 and along there. A man cannot remember these dates without having made particular note of them. I couldn't say the exact time. But it was along in the '80s.

Q. Just where was your slaughter-house located?

A. It was just on the east side, on the old Walla Walla road, on the bank of Three Mile Creek, right in front of Lone Pine Island, as you call it.

Q. You knew it as Lone Pine Island?

A. I knew it as Lone Pine Island.

Q. How did you happen to know it as Lone Pine Island? Just explain.

A. Because I heard it called by that.

Q. What gave it that name?

A. I don't know. I suppose it is from the Tree on the island.

Q. Did you see a tree there?

A. Yes, there was a tree there.

Q. Describe that tree as you recollect it.

A. It was a scrub pine, about 15 or 18 inches through, I would think,—I never went right to it—20 or 30 or 40 feet high; 30 feet perhaps.

Q. Where was it located?

A. Rather on the north end of the island. It was towards the north end of the island; on the north or west end. It was
467 down the river.

Q. About where with respect to the bank of the river? Near the bank or back?

A. Well, I didn't go from the pine to the bank, but I think it was some little distance east from the main bank of the river. I didn't go to the tree. My road didn't take me there.

Q. Did you ever see Indians fishing there?

A. No.

Q. Did you ever see any results of fishing there?

A. I have seen plenty of scaffolds with salmon on them to dry. I have seen fish nets sitting up around the shacks.

Q. Did you see any other fishing implements?

A. Perhaps poles with a hook and socket to gaff them.

Q. How many of those salmon racks with fish on them have you seen?

A. I don't know.

Q. How do you account, Mr. Jackson, for not having seen the Indians fish in the river there, if they did?

A. Because I was not particularly interested in it. Salmon hadn't any particular value. If a man wanted a salmon he could get it for little or nothing. And my road didn't take me there, and I didn't go there.

Q. They might have fished there and you not observed it?

A. They might have fished there and I not see them fish. All I seen there, I seen scaffolds with salmon drying in the sun.

Q. Those scaffolds, were there many of them?

A. Oh, there was a quite a few; two or three scaffolds there always during the fishing season.

468 Q. What became of those scaffolds? Did they stay there or not?

A. I expect they burned them up in winter for wood. I don't know.

Q. You don't know?

A. I don't know. I couldn't tell you.

Q. You observed other places on the river, did you?

A. Yes, I seen other places where they fished. They fished up further, at the Evans fishery, and they fished up at what we called Tumwater, the falls up there towards Celilo—they was fishing there, and different points along the river.

Q. What caused you to observe those places?

A. Because I was passing them.

Q. Why were you passing them?

A. Because the cattle that I brought from the Yakima and turned over between Ten Mile and the Deschutes naturally drifted back along the Columbia River in the summer of 1871, and I naturally had to go along the river to look up my cattle. I done nothing else during that summer but look up those cattle. There were about 125 or '30 steers left.

Q. You spoke of the Yakimas coming down from Simcoe. Where would they stay and what would they do so far as you know?

A. Well, the main body of them, they seemed to have established a camp that summer, the summer of 1871, during the fishing season and couse digging. Their main camp was over on the swale on the Klickitat side of the Columbia across the hill there; their main camp was there. And every day there would be gangs of them would come down and cross the ferry I know very well, remember distinctly, that I used to have to wait sometimes when a band of
469 Indians with pack horses would be there ahead of me, I would have to wait until that load would get over. They would get over the river on the Oregon side, and go off up the river. Where they went I didn't know. During the fishing season they would be there for a month perhaps.

Q. As I understand you, after they got across to The Dalles side, they went up the river?

A. Went up the river.

Q. Do you know how far they went up?

A. No.

Q. Who ferried them over?

A. Peter Nelson, the old ferryman there.

Q. Anybody after him?

A. Why, yes; Jensen ferried there a long time after him. But it was 3 or 4 years, or 5 years maybe, after this summer of 1871, I think, before Jensen came there.

Q. Have you seen Jensen ferry over these Indians?

A. Oh, yes; many times. I handled cattle a good many years both sides of the river, and I frequently met Indians on the ferry boat coming and going, sometimes bunches, sometimes singly.

Q. Have you ever seen the Indians crossing the river other places than the ferry?

A. Yes.

Q. Where?

A. Up the river there, I think about, I have seen them frequently in canoes below Celilo crossing, below the falls there, in canoes.

Q. Have you any place further down the river?

A. I think I have seen them crossing there about the island, below the islands.

470 Q. In canoes?

A. Canoes or skiffs.

Q. What was the character of those canoes?

A. Well, a canoe, you know what a canoe is. It is a log dug out, a dug-out, you might call it, or canoe. We always called it canoe.

Q. What were the relations of the Indians on the south side and the north side of the river?

A. I don't know. I never heard of any trouble among them. Never heard of any difficulty.

Q. Did they recognize boundaries?

A. I don't know.

Q. And limitations?

A. I don't know. I have no indication of anything of that kind. They might have, might not. I don't know.

Q. You never heard of anything of that character?

A. No.

Q. Would you have heard of it, Mr. Jackson, if there had been any such custom?

A. It is possible. It is possible. I might not and I might. I know they had frequent drunken rows, fighting.

Q. But that didn't relate to the tribal relations?

A. I don't know anything about their boundaries. I don't know anything about their treaty rights. I don't know anything about their boundaries—anything of the kind. Never heard of it.

Q. Do you know anything about whether the tribes on one side married into the other?

A. No, I couldn't tell you, because they are all mixed up. I didn't know a Simcoe from a Wasco, or a Wasco from anything else. I know the Indian spoke one language, Chinook, that is all I know. I know that I had an Indian work for me about 5 or 6 years. He married twice.

471 Mr. Bennett: How is that?

A. I had Indian Jim. You know of Indian Jim, Judge. Jim Jackson, he is now called. He picked up my name. He worked for me 5 or 6 years there. And he married twice. His first wife died and he married a second wife; but where he got her I didn't ask him. She might have been a Yakima, and might have been a Wasco, she might have been Warm Springs. I didn't ask him.

Cross-examination.

Questions by Mr. Bennett:

Did you have any way of telling a Yakima from a Wasco?

A. No.

Q. You didn't know?

A. Except if I asked him, Judge. If I asked him if he was a Simcoe or Wasco or something, then he would tell me he was, that is all I know. I couldn't tell one from another.

Q. You couldn't tell yourself what tribe they belonged to?

A. No.

Q. You couldn't talk the language of either?

A. Nothing except Chinook. Chinook was a common language among all of us then.

Q. Well, Chinook was a common language for everybody?

A. Everybody talked it. All the Indians talked Chinook.

Q. But you couldn't talk the Wasco language or the Yakima language?

A. No, sir; not a syllable.

Q. You think you remember in 1871 of seeing a bunch of Indians come down there who said they were Yakimas?

A. They said they were Simcoe Indians, off that reservation. There was quite a big lot of them. Oh, I suppose there were four or five hundred of them.

Q. How many?

A. Four or five hundred Indians. But they camped over on the Klickitat swale. That was their main camp.

Q. Where was the Klickitat swale?

A. You certainly know, Judge.

Q. I know. But perhaps Judge Wolverton may not know.

A. Perhaps not—excuse me. It was north from The Dalles, and immediately over the mountain. It lays right north of The Dalles across the river. When you cross the river and go out a few miles, go on the top of the divide, you drop immediately down on what is known as Klickitat swale.

Court: How far is that from The Dalles?

A. About 12 miles by the road till you drop over on the swale.

Q. It is about how far from the Columbia River?

A. I am telling you about 10 or 12 miles from the Columbia River. The Dalles is right on the Columbia River.

Q. Is that the nearest place that the Columbia River comes to where they were camped?

A. That would be the only road. No, they could cross the divide and cross down higher up.

Q. I am asking you how far was the nearest place.

A. It wasn't common for them to do that.

Q. I know, but I am asking you how far it was the nearest way across to the Columbia River from where they were camped?

A. Well, I suppose from their camp it would be about 10 miles—very near 10 miles.

473 Q. Were they horse racing over there?

A. Horse racing and the squaws were digging couse on the main road.

Q. Now, you say you think a bunch of those Indians came across the ferry?

A. Almost every day. Almost every day there would be a lot of them come over. Whether they would go back that night or not, I didn't know.

Q. And where they went you don't know?

A. Where they went, they went up the river. That is all I know. Whenever they went off the ferry on The Dalles side, they went up the river; that is all I know. Squaws, bucks and pack horses.

Q. When they got off the ferry at The Dalles side, they had to go right up town?

A. If they wanted to they did. If they didn't, they could go right up the beach.

Q. How could they go up the beach without going through town? Isn't there a slough comes down there that shuts them off, without going up through town?

A. If the river is very high, that might shut them off. If the river ain't high, they can go up anywhere they wanted to.

Q. Now, Mr. Jackson, isn't there a little slough——

A. Yes, there is a little slough.

Q. Made by a creek that comes down there?

A. Yes.

Q. And when it gets down close to the river, or fairly close to the river, below the bluff, in the upper end of The Dalles, the water becomes still, and widens out at all seasons of the year, until
474 a bridge was built there, into a slough that you could not cross without a boat?

A. No, no; not unless the river is very high. That creek don't go into the river at all. That slough don't go into the river at all, nor there is no creek coming in there.

Q. Do you know where the Regulator dock now is?

A. No, I think not.

Q. What say?

A. I don't think I do. I don't think I do. I haven't been in The Dalles, in town there, for 12 years.

Q. It was the same place 12 years ago that it is now.

A. There was no Regulator there then—no Regulator dock. They landed there about the mouth of Three Mile Creek when I left there. I mean Mill Creek—about the mouth of Mill Creek—just above the mouth of Mill Creek, when I left there, the Regulator business.

Q. Do you know where Washington street comes down?

A. Yes.

Q. Well, now, isn't there a creek that comes into the Columbia River at low water right down from the foot of Washington street, right straight in line with Washington street, where Washington street if it was extended across the beach would touch the river?

A. No, I don't think so.

Q. Isn't there a slough or creek that comes down through there?

A. There is a slough that comes down through there, but it don't go into the river, except when the high water comes around and brings it down.

Court: I don't think we need take much time with that. He says they went up the river.

475

A. They could—whenever the ferry boat landed on the Oregon side, I could get right off and go up the beach where I wanted to. I have done it a hundred times.

Q. When these Indians got up in the town, you couldn't tell them from any other Indians?

A. No, not a bit.

Q. Or where they would go?

A. No.

Q. You didn't watch where they went at all?

A. Never.

Q. Now, your slaughter-house stood how far from Three Mile Creek?

A. Right on the bank, on the north bank of Three Mile Creek, on the east side of the main road that went up from the bottom, the old Walla Walla road.

Q. On the north bank?

A. Of Three Mile Creek. The creek comes in from the east into the river, going in west. I was on the north bank just off the road that goes up from the bottom to Walla Walla.

Q. That was a traveled road during all those years?

A. All the years. Is today.

Q. Up on the bluff there?

A. Yes.

Q. As far back as you can remember?

A. Yes. That is 1866, as far back as anybody can remember, I guess.

Q. Now, out in that vicinity of where your slaughter-house was, there was in those days and is yet a nice little grassy flat, wasn't there?

A. Yes. Yes, right front of my slaughter-house, and it was on the north side of the creek, a nice grassy flat; it may be there yet, if the sands ain't covered it up. I don't know.

476 Q. Now, then, where was this Indian platform or drying place with reference to that grassy flat there?

A. Well, it was immediately between that flat and the river, on the island, what we call the Lone Pine island. What made that island was a slough that come around this side of the island, with the Columbia on the other side, and the slough in the summer would be dry. When the river was up, it would be up, and the slough would be full of water.

Q. How far was that drying place from your slaughter-house?

A. I suppose it was about 400 yards.

Q. About a quarter of a mile?

A. A quarter of a mile—something like that. Out almost west from the slaughter-house, a little north of west from the slaughter-house.

Q. Now, what years was it that you claim to have had, or that you did have, your slaughter-house there?

A. Oh, along in the 80's.

Q. What 80's?

A. Well, anywhere from about 1881 up to quite a number of years.

Q. Well, up to about 1885?

A. I wouldn't make no definite date, Judge, because I don't re-

member. But it was several years into the 80's, in the early 80's, my slaughter-house was there.

Q. As near as you can remember?

A. As near as I can remember I have given it to you.

Q. About how many years would it be as near as you can remember?

A. I would say four or five or six years, maybe seven, maybe a little more. I sold it out to Wigle, and he occupied it afterwards.
477 wards. I sold it out to Bill Wigle, and he occupied it after I left.

Q. Did this Jackson that you say worked for you, did he live out there on the island?

A. Sometimes. Not while he worked for me, he didn't. But before I think, and I know afterwards he did. He was born there at The Dalles.

Q. Out there by that drying place?

A. Yes, around that drying place. They had shacks out there. While he worked for me he lived in town.

Q. During the time you had your slaughter-house there?

A. Yes. Yes, he worked for me about the slaughter-house; also handled cattle. He worked about the slaughter-house for me—done the killing; also would go and bring cattle in from the country, or would deliver beef from the slaughter-house. He did anything I wanted him to do. While he worked for me he didn't live on the island, but after he worked for me he lived on the island, and before he worked, on the island. He was a native. He was born there and lived there. He was a native—born and lived there about The Dalles. He was twenty or twenty-five years old.

Q. Now, as I understand you, you never saw any Indians fishing at that point?

A. On the island?

Q. Yes.

A. Never went over there, right there, to see them fishing at all.

Q. I say, you never saw any Indians fishing there?

A. I didn't see it, no, sir.

Q. But you did see Indians fishing further up on the river?

478 A. Yes, I have.

Q. You saw them fishing on the Washington side at the head of the dalles or narrows there, did you?

A. I have seen them fishing on the Washington side below the falls, above there, yes.

Q. Below the falls at Celilo, you mean?

A. Yes.

Q. Did you also see them fishing on the Washington side—

A. I don't remember that I did, Judge. I don't remember that I did.

Q. Did you see them fishing on the Oregon side at Celilo, too?

A. Yes; yes, dipping.

Q. That was recognized, and the place at Wish-ham was recognized as the usual and accustomed Indian fishing places up there, wasn't it?

A. I think so.

Q. Yes.

A. Yes. There didn't seem to be any restrictions on fishing anywhere. Everybody fished. Fish had no value.

Q. But everybody knew about those places up there?

A. I think so. If they didn't, they lost their opportunity. Everybody that wanted to.

Q. Everybody knew about them?

A. Yes.

Q. Generally they were talked about all over the country, those fishing places up at Wish-ham and up at Celilo?

A. Yes, yes.

Excused.

479 HARRIET GULICK called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Is your husband Henry Gulick?

A. Yes, sir.

Q. Are you a full-blood Indian?

A. I am a full-blood.

Q. Who were your parents? To what tribes did they belong?

A. My father was part Cascade, and my grandfather was from The Dalles at Wah-sucks. My grandmother was from across the river on Washington side.

Q. What tribe?

A. Wish-ham tribe.

Q. Where was her father from?

A. He was from the Cascades, and went up to The Dalles, and that is where he married my mother.

Q. How old is she?

A. I am about eighty.

Q. Where do you live?

A. I live right there at Wah-sucks.

Q. How long have you lived there?

A. Right where I live now, I have lived there about 23 years now.

Q. What do you do there, or what does your husband do there?

A. My husband used to have a wheel there at one time.

Q. How long ago was that that he had the wheel?

A. It was a long before that big high water that we had here that we had a wheel there.

Q. About how many years ago?

A. Why, it would be about twenty or a little more. I just couldn't say how long.

480 Q. Have you had a wheel there since that time?

A. We had a wheel there since.

Q. When was the last time you had a wheel there?

A. I couldn't tell just how long, but I think along about ten years ago.

Q. What became of that wheel?

A. It has been about three years now, it is all broken up, and never repaired.

Q. Then from about ten years ago to three years ago did your husband operate that wheel?

A. Yes, sir, just about that time.

Q. Did he have anyone interested with him in the wheel?

A. The first man that my husband had with him with that wheel was a man by the name of Charley Hall.

Q. What became of Charley Hall's interest in the wheel?

A. Seufert is the man bought Hall's interest out.

Q. How long has Mr. Seufert been interested in the wheel?

A. I couldn't tell you just how long.

Q. How did Mr. Seufert and your husband operate the wheel?

* What was their business? How did they work it?

A. They had half interest in the wheel, each one of them.

Q. What became of the fish that the wheel caught?

A. My husband took the salmon up to the cannery, Seufert's cannery.

Q. Did you ever have a brother named Wasco Charley?

A. Yes, sir.

Q. What became of him?

A. He died.

Q. When?

A. Last year, about this time.

Q. Where did he fish?

A. Down at place called Kum-sucks.

Q. Where is Kum-sucks? Describe the place.

A. It is away out on the point there where the river makes
481 a turn, that is the place called Kum-sucks.

Q. How long did your brother fish there?

A. He was living there about forty-five or forty-seven years, and ever since he lived there I remember him fishing out there on this point.

Q. Did any other Indian ever fish out there?

A. I have seen Jake Andrews fish there.

Q. Do you know Sam Williams?

A. Yes.

Court:

Q. Ask her if Indians came there in large numbers and fished there from year to year.

A. Yes, I have seen people fish there, a good many of them from both sides of the river, and we didn't know anything about license or anything of that kind at that time.

Q. Has Sam Williams fished there?

A. Along about two years after the high water that is the time I saw Sam Williams fish right straight out from my house down towards Kum-sucks.

Q. How did Sam Williams come to fish there?

A. Sam has fished all along the Columbia river, and finally he got

up there to The Dalles, then he went to this point and commenced fishing there.

Q. Did your brother object to his fishing there?

A. No, sir.

Q. Why not?

A. The reason why he didn't object of him fishing there because my brother and Sam Williams were good friends and relative.

Q. What relatives were they?

A. Now, in Indian, Sam's mother is our sister, but you white people call it cousins, and that is why we thought that Sam was a nephew of ours.

Q. Nephew in Indian?

A. Now, today I claim Sam is my nephew.

Q. That is according to Indian customs?

A. Yes, sir.

482 Q. Were Sam Williams and Wasco Charley, your brother, always friendly?

A. Yes, sir, they always got along nicely.

Q. Explain to the court why they were friendly, how you know it.

A. Ever since Sam come there to fish any time that my brother was not fishing and Sam was fishing, he could go down there and get his salmon from Sam any time my brother wanted to get a salmon from him. And I have done the same thing myself, gone down and get a salmon from Sam Williams at any time.

Q. State whether or not Wah-sucks was an important fishing place.

A. Yes, sir, I know that that place Wah-sucks, and some calls it Kum-sucks, is a very important point to catch fish.

Q. Why?

A. The reason why the Indians thought it was an important place because it is one of the earliest fishing points there was along there. That is where they caught fish the first time in the spring.

Q. Did your husband catch many fish there with his wheel or not?

A. Yes. When he first built the wheel he caught quite a few fish with his wheel.

Q. How about later years—did he catch many or not?

A. He never caught as many as he did before.

Court:

Q. That wheel was right around the point above, wasn't it?

Mr. Rankin: Just a second, your Honor. Ask her if she recognizes that. (Handing witness photograph.)

A. Yes, sir.

Q. What is it?

483

A. That there wheel is on my place.

Q. How does she know it is on her place?

A. I can tell one way by that crib stands out from that wheel. There used to be another wheel there, but it washed out and they only rebuilt one afterwards. And another way I can tell is by those rocks there.

Q. Is that the wheel your husband operated with Seufert and Charley Hall?

A. Yes, sir

Mr. Rankin: We ask that this be marked for identification.

Mr. Bennett: Offer it in evidence if you want to. We won't object.

Mr. Rankin: All right. We will offer it in evidence at this time. Marked "Government's Exhibit 10."

Q. Tell her the Court wants to know whereabouts that wheel is from Kum-sucks.

A. I will say, for instance, this is where the wheel is located, and Kum-sucks would be right off this way from it.

Q. Where with respect to up and down the river?

A. It is more down the river than it is up the river.

Q. Which is more down the river?

A. Kum-sucks is.

Q. More down the river from the wheel?

A. Yes. The wheel is away out here. Kum-sucks would be off here, she says.

Court: Is that the wheel that her husband described there?

Mr. Rankin: Yes, it is the same wheel, your Honor.

484 Court: I am confused about it. There was one fishing place just around the point, very close to it, as described by the former testimony, and then, as I understand it, Gulick's wheel was still further around in the inlet.

Mr. Bennett: I think we could agree about that, Mr. Rankin and myself, that the head of this slough that the Gulick wheels were in is some distance above this point in question. I wouldn't undertake to say exactly how far, but some distance on the Columbia River above this point in question.

Mr. Rankin: Well, now, let us see if we understand each other. It is not a great distance.

Mr. Bennett: I couldn't say exactly how far. My judgment would be it would be a quarter to a half mile, something like that, but that might not be right. I never observed it with reference to that.

Mr. Rankin: I don't think it would be quite that far, but we will try to get at that by better testimony later; but it is not on the main river.

Mr. Bennett: No, their wheel is on this slough that runs around and makes that island in high water.

Court: That is the way I remember it.

Mr. Rankin: And that is the way this shows, your Honor.

Court: Now, she says this is on her land.

Mr. Rankin: Yes.

Mr. Bennett: Your Honor will remember that the other testimony developed that she had half of one of those lots in there that she owned.

Court: Yes, I understand.

Q. Which side of that little slough is the wheel on—the river side or the house side; the north side being the river side, and the south side being the house side?

A. It stands over next to the shore.

485

Q. South side or north side? Get her to define.

A. I don't know anything about north or south or anything of that kind; but it stands next to the shore on this side.

Q. Well, is it Kum-sucks side or the other side?

Court: Oh, it is on this side of the river. We all understand that.

Mr. Rankin: Oh, all right, your Honor.

Q. Did she ever see any other tribes—did she ever see any Indian tribes fishing there at Kum-sucks?

A. Yes, I have seen other Indians fish there.

Q. Name the tribes they belonged to?

A. I have seen the Wish-ham people fish there.

Q. Who else? What other tribes?

A. I couldn't say just what other tribes has been there, but there has been quite a good many different people I have seen there fishing.

Q. How did the Wish-hams get over there?

A. They had canoes.

Q. Where did they cross?

A. There is one crossing right there at Kum-sucks, just above Kum-sucks.

Q. Was there any other crossing?

A. Another crossing is at Til-mich-tich.

Q. Have you ever crossed there?

A. Yes, sir. My mother and I has crossed there when I was a girl.

Q. Where?

A. At Til-mich-tich, go on across on the other side.

Q. Where did you leave the Oregon side and where did you land on the Washington side?

A. On the Oregon side is place called Til-mich-tich, and the landing on the Washington side is what is known as Wah-ki-muck.

486 Q. Where is Wah-ki-muck with regard to Big Eddy, if she knows what Big Eddy is.

Q. That Wah-ki-muck is below the Big Eddy.

Q. Below the Big Eddy?

A. Jake Andrews had a house there and it is there yet, where this place that I have reference to.

Q. That place just above Kum-sucks where they landed, where was that, on the Oregon side?

A. This would be Kum-sucks in here, and the crossing is right above here. It is called the Kum-sucks landing.

Q. Called Kum-sucks landing?

A. Yes.

Q. Where with respect to her house?

A. Well, this would be my house here and Kum-sucks would be off in here.

Q. A little above or a little below her house, if it was on the bank of the river?

A. Yes, sir. This would be my house, and going to the river when you hit the river, why here is Kum-suck; right in here.

Q. Above or below where you hit the river?

A. Yes, below.

Q. Were there other crossing places?

A. Another crossing called Kuch-much.

Q. Whereabouts is that?

A. That is above the cannery a little ways.

Q. How long has Sam Williams fished at Wah-sucks?

A. As I stated before, I couldn't say just how long, but it was after the high water, about two years after that, is when I first saw him fish there:

Q. How has he fished there? What means?

A. When I first knew him to fish there, he fished with a net.

Q. How later did he fish?

A. Later he fished with a wheel.

Q. What years did he fish with a wheel if you know?

487 Court: I think that has been proven in the former case, hasn't it?

Mr. Rankin: Very well, your Honor.

Court: That is only a suggestion, Mr. Rankin, if you think it has not been.

Mr. Rankin: I think the record discloses, your Honor.

Q. Ask her whether or not she remembers when the Government blasted the point off out there at the head of Wah-sucks.

A. Yes, I remember.

Q. Was Sam Williams fishing there with a net before that or not?

A. Long before that blasting was done.

Q. Ask her if she can tell by any other event the year of the high water. What year of high water does she refer to?

A. I could not say just how long this high water has been, but I think it has been along about 22 or 23 years, something like that.

Q. Was that before or after the Government blasted off the point, the high water she speaks of?

A. That was after it was blasted, after the high water. This point was blasted after the high water.

Court: That high water was in 1894, wasn't it?

Mr. Rankin: Yes, that is what I refer to.

Mr. Bennett: The highest water.

Q. Ask her how high that water was compared with other years.

A. If any of you knows where my house is, the water was clear up to where my house is that year.

Q. How does it compare with other years? Was it higher or lower than other years?

Court: It was much higher. I think that is a matter that need not be gone into.

Recess taken until 2 P. M.

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PORTLAND, OREGON, January 26, 1916—2 p. m.

HARRIET GULICK resumes the stand.

Q. How long have you been married to Mr. Gulick?

A. About 40 years.

Cross-examination.

Questions by Mr. Bennett:

Q. Ask her where she was born.

A. I was born at Wah-sucks.

Q. Ask her where she lived when she was married to Mr. Gulick.

A. We lived at The Dalles first.

Q. Ask her if they were married at The Dalles.

A. Yes, sir.

Q. Ask her how long they lived at The Dalles before they moved out to where she now lives.

A. I could not say just how many years.

Q. Ask her to tell, as near as she can, how many years.

A. Well, living out to Wah-sucks now about 22 or 23 years, and we may have lived at The Dalles ten or twelve years, something like that. I could not say just how long.

Q. Ask her if she ever lived down at the Cascade Locks.

A. I have never lived there. I have visited there.

Q. Ask her if she used to visit down there when she was a girl.

A. We lived there a while until my father died. Then we moved back up to Wah-sucks again.

Q. Ask her if she can remember as far back as the battle between the whites and the Indians at the Cascades.

A. I remember the time.

Q. Ask her how old she was at that time.

489 A. I might be nine or ten, something like that.

Q. Now ask her where she had been living just before she was married.

A. I was living at The Dalles there before I was married.

Q. Before she was married, did she say?

A. Yes, before I was married, we was living there at The Dalles.

Q. How long had she been living at The Dalles before she was married?

A. Oh, I lived there quite a long time.

Q. Five or ten years?

A. Might have been five or ten years, and might not have been so long.

Q. Now ask her if her brother Wasco Charley used to live on the Military Reserve near The Dalles before he moved up to Wah-sucks.

A. Yes, he lived away from Wah-sucks for a while. Then there was a white man told him "you had better move over there now, and live on your own ground."

Q. Ask her if that was at the time the Government sold the Reserve.

A. Well, it might have been, but I could not say as to that.

Q. Now ask her if she was there at Wah-sucks when the Government engineers blew off the point at Kum-sucks,

A. I was living there. I have a home there.

Q. And she remembers it, does she?

A. Yes, sir.

Q. Now ask her if at that time the man who was doing the work built some of those houses on the island.

A. Yes, I remember of some houses being built there about that time.

Q. Ask her how many houses were built there by the Government at that time.

490 A. There might have been about four houses been built there.

Q. Ask her whether her house is on the island or across the slough from the island.

A. My house is on that island. It is on that same island where these houses are.

Q. Ask her if there is not a slough between her house and the point Kum-sucks.

A. There is no slough between my house and Kum-sucks.

Q. Well, ask her if there is not a slough between her house and the point where the island extends out into the river. Ask her if there is not a slough between her house and that point.

A. There is no slough that I know of between my house and the point excepting at time there is water runs through there, but dries up.

Q. Tell her that is what I mean, if there is not a slough there when the water is up, between her house and the point.

A. Yes, there is water there in the summer.

Q. What say?

A. There is water there between my place and this point in the summer time, and the main slough, what we call the slough, runs back of my house, then that forms an island there.

Court: Ask her if the water gets all over that point sometimes.

A. Yes, sir. I have seen that point all under water, and it looked as though some time it is out in the middle of the river.

Court: Wouldn't that wash her house off? Ask her wouldn't high waters wash her house away if it is on that point.

Interpreter: You are not talking about Kum-sucks point
491 then?

Court: Yes, I am. She says her house is between Kum-sucks and the mainland, and the water when it gets high runs back of her in a slough. Ask her if the water does not cover the whole point there and if it would not wash her house away.

A. When you spoke of this point I thought you had reference to the point out at Kum-sucks, but if the point that you mean is where my house is, that high water that I spoke of reached my steps at my house, and that is as near as the water ever come to it.

Court: Well, that is an answer.

Q. Ask her if her house now is at the same place where she was born.

A. My house is not exactly where I was born, but it was right along there some place where I was born.

Q. Ask her if she was living there when her brother Wasco Charley moved from the Reservation down there.

A. My brother moved there before I did; that is, this last time where I say the home that I have got now. We come there after my brother did.

Q. Well, now, ask her if her brother built a house there when he moved down there from the reservation. From the Military Reservation, I mean. Ask her if he built a house there when he moved down there from the Military Reservation.

A. From the time he moved from where he lived before, he built a house there, and he was living there all the time afterwards.

Q. Ask her if there were any other houses there when her brother built his house there.

492 A. There was four houses there besides my brother's house.

Q. Ask her who lived in those houses at that time.

A. Slesam was one of the parties; and Chapman; another man by name of Smioke; and just here you might say lately that Peter Jackson and Sam Williams built there, after these other parties built.

Q. Ask her if Sam Williams built there or if he moved into one of the houses that the Government built there.

A. Sam Williams bought this house from a white man.

Q. Ask her if that was the white man that blasted off that point.

A. That is the man that was doing this work there that Sam Williams bought this house from.

Q. Now ask her if Peter Jackson lived in one of those houses too.

A. Peter Jackson built a house of his own there.

Q. Ask her if she is sure that the house that Peter Jackson lives in was not built by the man who blew off the point.

A. I am positive that Peter Jackson built his own house; paid his own money for it.

Q. Ask her if this low structure in the left of the picture is the cribbing of the first wheel that her husband had there.

A. This is the first wheel that my husband built.

Mr. Rankin: What side of the picture?

Court: On the right.

Mr. Rankin: I was asking him to tell what side of the picture it was on for the record.

A. That would be on the left side. This wheel is over next to my house and that stands just across this water; there is a bridge run clear across to that crib.

493 Q. Ask her if she can see Mr. Seufert's cannery on that picture.

A. That is too dim for me. I cannot see it.

Q. Ask her if she knows where those trees are.

A. Those trees there is above my house.

Q. Are they at Mr. Seufert's cannery about?

A. Seufert's cannery may be off up in here some place. It might not be right at the trees.

Q. Now do I understand her that this structure was put in before this one was?

A. Yes, sir. This was put in first; this afterwards.

Mr. Bennett: Then I suppose that it may be admitted that the witness refers to Government's exhibit 10, and that she says that the wheel at the right of the picture, as you look towards the trees, is the one that was put in first, and the other one at the left was put in afterwards.

Mr. Rankin: Admitted.

Q. Then the cribbing on the left is where your last wheel was?

A. Yes, sir. This was put in first; then this one afterwards.

Q. Ask her if Mr. Seufert has a wheel a little ways above their wheel.

A. Yes, he has one above us.

Q. Now ask her to look close and see if she can see Mr. Seufert's wheel in the picture.

A. I can see this cribbing in the wheel plain enough, because it is large, but the others I could not tell you where they are.

Q. Now when she speaks of Sam Williams fishing there with a net, what kind of a net does she mean?

A. The first net that I spoke of was a gill net.

Q. Ask her if that was a long net that floated, that was
494 floated on corks in the river.

A. Yes, sir. It is a gill net with corks is what I had reference to.

Q. Ask her what other way she saw Sam Williams fish.

A. Where he used this gill net is along those eddies there; but the dip net he used right at the dip stand.

Q. Ask her if she claims to have seen Williams fish with a dip net.

A. Yes, I have seen him fish with a dip net.

Q. Ask her what way he fished the first time she saw him fish.

A. With gill net, the way I noticed him first fishing.

Q. Now she has testified about some crossings of the river. Ask her how many crossings there were between the Big Eddy and Kum-sucks.

A. There is three prominent crossings that I know of.

Q. Ask her how far the first crossing was above Kum-sucks.

A. It is not very far above Kum-sucks where this crossing is.

Q. Ask her if it was quarter of a mile or half a mile or a mile.

A. Oh, it might have been somewhere along a quarter or something. I don't know the distance.

Q. About what?

A. About a quarter or such a matter.

Q. Ask her where the next crossing was.

A. Til-mich-tich is the other crossing.

Q. Ask her if she knows where the Covington place is.

A. I know where Mrs. Covington's wheel is, just below there.

Q. Right close to where Mrs. Covington's wheel was.

A. Just a little below; not very far.

Q. Now ask her where the next crossing was.

495 A. There is another crossing just above the cannery called Kuch-nuch.

Q. Ask her where they landed on the Oregon side at that crossing.

A. That is the place that I just mentioned a while ago, this Kuch-

nuch; that is the name of that landing. We used to cross horses there, swim them across.

Q. Ask her if she knows where the mouth of the canal is, where the lower end of the canal is.

A. The Government canal?

Q. Yes.

A. Below that canal.

Q. How far from that canal?

A. I could not tell just exactly, perhaps about half a mile.

Q. Above or below the mouth of Five Mile Creek?

A. Above the mouth of Five Mile.

Q. Now ask her if that wasn't where they crossed when they crossed at all, when the water was up.

A. No. People never crossed there during the right high water.

Q. Ask her if they couldn't cross there when the water was higher than they could down at Kum-sucks.

A. They could cross better at Kum-sucks than they could up to Kuch-nuch in high water.

Q. Ask her, when they crossed at Kum-sucks, if they landed on the Washington side over in a little bay over on the other side; a little eddy.

A. When they crossed from Kum-sucks they go over on the Washington side, and there is an eddy there, that is where they
496 land.

Q. Ask her if the water was not very swift there when the water got up.

A. Yes, it gets quite swift there, but they can cross there.

Q. Ask her if there were not great whirlpools there when the water got up.

A. Yes, when the water gets real high there is lots of whirlpools there. Then they don't cross there, at real high water.

Q. Ask her if there were not big whirlpools there when the water got up ten or fifteen feet.

A. Yes, there is some whirlpools there.

Q. Now ask her where they landed on the Washington side when they crossed to the Covington place.

A. There is a bluff of rocks there just above where this eddy that I speak of, crossing from Kum-sucks, above that bluff is where they land from Covington place.

Q. Ask her if that is at the Big Eddy.

A. No. The Big Eddy is away above that.

Q. Now ask her, when Wasco Charley was alive, if both Wasco Charley and herself didn't go up to Mr. Seufert's cannery and get a great many fish heads to dry.

A. All the salmon heads that ever I got from Seufert's cannery I paid for.

Q. Ask her if she claims that she did not get a great many fish heads up there that Seufert gave her.

A. He never gave me no great deal, but sometimes he would give me a few.

Q. Well, ask her if she used to buy a good many from him.

497 A. Sometimes I would buy as much as two boxes from him at 25 cents a box.

Q. Ask her if she would take them down to her home and dry them.

A. Yes, I would take it home and dry it for my own use.

Q. Ask her if Wasco Charley used to do that too.

A. Yes, he has gone up there and got some and dried some of them and salted some of them.

Q. Now ask her if Wasco Charley did that all the time that she was living there every year.

A. No, we have never went up there all the time, just once in awhile we would go.

Q. Ask her how many years she and Wasco Charley have been going up there and getting these fish heads.

A. I couldn't say just how long. It is quite a long time.

Q. Ask her if it was fifteen or twenty years.

A. Oh, it might have been fifteen or twenty years.

Q. Now ask her if they also used to go up there and get little salmon from Mr. Seufert—little white salmon—ask her.

A. What salmon Seufert gave me is these white salmon that he had no use for himself.

Q. Well, ask her if she and Wasco Charley got a good many of those white salmon that Mr. Seufert didn't have any use for.

A. No, he has never given us no great amount. Sometimes we might get one or two apiece or something like that.

Q. Now ask her if when they blew off the point there they blew off these dipping places.

A. Yes, there has been quite a few dip stands been destroyed there when they were blasting rocks. And when they came
498 to this point Kum-sucks where the Indians used to dip all the time, my brother went up to this man and told him that "I don't want you to blow up that dip stand. That dip stand there is just like my mother. Whenever I want any salmon, why I go down there and catch salmon for my own use."

Q. Well, ask her if they did blow it off.

A. That dip stand is there yet, and it has our iron there now.

Q. She claims that the Government didn't blow off the dip stand.

A. No, they never blowed it up.

Q. Ask her if she claims that the dipping place where Wasco Charley dipped was on the lower side of the point or on the upper side of the point.

A. The dip stand that I have reference to is above this point where my brother used to dip salmon.

Q. She hasn't answered my question. Ask her whether she claims that the place where her brother used to dip was above the point or below the point.

A. The dip stand that my brother supposed to claim is above this point.

Q. How far above the point about, as near as she can tell? How many feet?

A. I could not tell you just how far.

Q. Ask her if it was as much as one hundred feet above the point.

A. When you get to talking about feet or anything like that, I don't know anything about it.

Q. Ask her how many times as far as across this house it was.

499 A. Well, perhaps it may be as far above the point as from here to the other end of this building.

Mr. Bennett: That would be about 40 feet.

Mr. Rankin: The other end of the building, she says.

Court: Does she mean the room or the building?

A. About as far as from here to that other window there where you see that man sitting in the window with a hat on.

Mr. Bennett: It may be stipulated then that the distance she indicates is about one hundred feet.

Mr. Rankin: Yes.

Q. Ask her when she got these salmon heads and took them down there how she dried them?

Court: Is that material here, Judge?

Mr. Bennett: Well, not just the fact, your Honor, of how she dried them, but it might be material in its bearing upon the testimony of some of these other witnesses.

Court: Very well. Go ahead.

Q. Ask her how she dried them.

A. I have a little dry house there at home, I dry my salmon heads in.

Q. Ask her if it is a kind of a platform.

A. My dry house is built just like the Indians used to build them in early days only it is smaller. I got mats laying on top, and that is where I dry my fish under.

Q. As scaffold with mats on top? A kind of a scaffold of poles with mats on top?

A. I have got sticks tied together, they are standing up and a pole laid across there, then the mat on top of that, and it forms the dry house.

Q. Ask her if her brother Wasco Charley dried his in the same way.

500 A. Instead of him making the dry house like mine, he made a little house. Instead of tying the poles together, he built a little house and dried his fish in there that way.

Court: Can the Indians fish off that rock now, as it has been blasted off? Since it has been blasted off, can they fish off the rocks where they blasted it off?

A. Those dip stands that I said that they was blasted out, that has been destroyed now. They could not catch any more fish there.

Court: Well, can they catch any fish where the Government has blasted off; at any place where the Government has blasted off those rocks at that point?

A. Those points, those dip stands where the Government has blasted, why it is pretty hard for anyone to catch any fish there now.

Court: The evidence was that the Government blasted within five feet of low water. The question in my mind is whether they could use that place where they blasted down within five feet of the water for fishing now. Part of that rock was blasted to a depth under the water of some eight feet and the rest of it blasted down within

five feet of low water. Now the question I had in mind was whether they could stand on those rocks where they have been blasted off at any place, and fish from the rocks where it had been blasted off.

A. No, they cannot fish along there where it has been blasted.

Redirect examination:

Q. Ask her if there are other dipping places along on that point.

A. As I said there at the Kum-sucks there is a dipping place, and there is other places. This here would be Kum-sucks.

501 Well, there is -other place down below that where they could fish.

Q. Ask her if she hasn't seen them dipping off the point there, or the bank up to which the Government has blasted off, since that time—since the blasting.

A. I have seen them try to fish along here different places.

Q. Ask her if she knows Joe Estabrook.

A. She knows no one by that name. She might know him.

Q. Ask her if the Indian understands white man's measure of feet and miles.

A. The Indians, most of them, don't know anything about those miles and feet.

Q. Now the dry houses that she spoke of there, does she recall whether or not the Indians had dry houses on Wah-sucks long times ago.

A. Yes, sir. There has been dry houses there for a good many years.

Q. What was the last time she saw any dry houses belonging to other Indians than herself there.

A. Here of late there has not been any one had a long dry house excepting the one that I had.

Q. When was the last time she remembers other Indians having long dry houses at Lone Pine.

A. Oh, it might have been about 25 years since I saw a real large dry house there.

Q. Belonging to someone other than herself.

A. Those belonged to other people. It was not mine.

Q. Has she seen smaller ones than this big one that she speaks of there at Lone Pine, other than her own?

A. The people that had those big long dry houses, they are
502 all dead. Then since that they have been building them just like I done. Nearly everyone has little dry-house of his

own.

Q. When does she recall seeing the last of those little dry-racks there?

A. It might have been 10 or 15 years since I saw those small dry-houses built.

Q. Did Wasco Charley pay Mr. Seufert for the fish heads he got?

A. Yes, sir.

Q. What was the usual price for fish heads?

Court: She said she paid 25 cents a box.

Mr. Rankin: I am asking for the general price now—what she understood they all paid. Was there a sort of market price for them.

Court: Oh, very well.

A. We all paid 25 cents a box for the salmon heads.

Q. Have your husband and Mr. Seufert always been friendly?

A. Yes, sir.

Q. Have you always been friendly with Mr. Seufert yourself?

A. Yes.

Q. I don't know whether she testified or not, but I would like to inquire whether there was a crossing below Wah-sucks down the river, or whether she knows there was a crossing?

A. Yes, sir, there has been a crossing down below Wah-sucks.

Q. Did that have a name, and if so, what?

A. That lower crossing is called Skutch-ki-tee. That is away down below.

Q. I show you Government's Exhibit 10, which has just been referred to, and ask you if at any time both wheels operated, the one on the right of the picture, and one built on the crib at the left of the picture, at the same time?

503 A. Yes, I know of these two wheels is operating at the same time.

Q. Did they operate for a long time or a short time?

A. I could not say just how long. It might have been 20 years and it might have been longer. I could not say.

Q. I mean when they both operated together, both worked?

A. I could not tell you just how long they both operated.

Q. Did they operate together after Mr. Seufert was interested in them or before?

A. Just only this one wheel was operating when Mr. Seufert bought in.

Q. You have had no difficulties or trouble with your husband about coming down to testify?

Mr. Bennett: I don't see how that is competent and material. We object to that as incompetent and immaterial.

Court: I overrule the objection.

A. She says we never had any trouble.

Recross-examination:

Q. Ask her if, when Mr. Seufert and her husband were operating that wheel, they were not paying her rent for the use of the land.

A. If Seufert paid me any rent I don't know anything about it.

Q. Ask her if they didn't pay her \$35 a year rent during that time.

A. I don't know anything about it.

Q. Ask her if this lower crossing that she speaks of, below Kum-sucks, was down in the stillwater below the rapids?

A. Yes, that is away down below the rapids.

Q. About how far below this point in question, below Kum-sucks?

A. Oh, it is quite a ways below. I don't know.

504 Q. Ask her if it was a half mile?

A. It might have been. I could not say.

Excused.

505 GEORGE ME-NIN-OCHT, called as a witness on behalf of the Government, being first duly sworn, testified as follows, testifying through the Interpreter:

Direct examination.

Questions by Mr. Rankin:

Where do you come from?

A. Yakima.

Q. Are you allotted on the Yakima Reservation?

A. Yes.

Q. About how old are you?

A. Something like seventy-six.

Q. Where were you born?

A. At Skein.

Q. Did you ever fish in the Columbia River?

A. I have.

Q. Do you know a place called Wah-sucks or Kum-sucks?

A. Yes, I have some knowledge of it.

Q. Did you ever fish there?

A. My father fished there, but us young boys didn't fish there. I didn't fish at that place.

Q. Does he know whether or not Yakimas fished there?

A. They have fished there from the Yakima side too, just the same.

Q. What tribes has he seen fish there?

A. I said yes, the Yakima Indians came over there and fished with the rest of the Indians that congregated together.

Q. Who were some of the tribes from the rest of the Indians?

A. He says that the tribes of which are Warm Springs now, used to fish there, and their descendants are here with us today, the children of the Warm Springs now called.

Q. When did he first see Yakima Indians as well as the other tribes fishing at Wah-sucks?

506 A. I have seen the Indians fishing there when I was a boy. The Indians that I have seen that were fishing at the time are all dead, the old people.

Q. Does he remember any other event that occurred about the time he saw these Indians fishing there?

A. Yes, I have seen these Indians that I have spoke of fishing after the war between the whites and the Indians, after the war.

Q. Yes. What war was that?

A. This Kami-aken, the chief, war with the whites.

Q. When was the last time that he saw any of his tribe fishing there?

A. He says I saw the Indians fishing the last time when I was a full-grown man; I don't know just the number of years; I cannot say. But I was a full-grown man when I last saw them fishing.

Q. How long ago was the last time he was down there?

A. He says that I think I was about 35 or 40 years old, I think,

when I saw the Indians last fish there. I cannot say though the exact time, but somewhere along there, when I saw the Indians last fishing there.

Court: That is when he was 35 or 40 years old?

A. Yes.

Q. Do they leave the Reservation now in the same numbers that they used to, to fish at Wah-sucks?

A. How?

Q. Do they leave the Reservation now in the same numbers that they used to, to fish at Wah-sucks?

A. He says no. After the white people came in and took possession of the fisheries, why Indians stopped coming entirely, very near.

Q. What white people took the fisheries?

507 A. He says that I understood the first white man by the name of Seufert took possession of the fishery. I was told that, and then later on I seen myself that he was the man that took possession of the fishery.

Q. Tell the Court how he saw himself.

A. I saw him myself at Tenino.

Q. What happened?

A. He says I saw him there. He had some improvements there, and I was told there that was Seufert himself. And so from that time I knew him that he was there. Of course, I had no business with him whatever, but then I saw him there at the place.

Q. What does he mean by improvements?

A. He says that he had a fence up.

Q. Did Mr. Seufert ever remonstrate with him about fishing at all?

A. Yes. He says not on this side, but he did on the other side of the river, that he had some words with me.

Q. What happened?

A. I understood him to say that this fishing right is mine now and you people must keep away.

Q. Did the Indians discuss that, what Seufert had said?

A. He says all I know that the Indians did talk the matter over among themselves was how this was, how it came about that these fishing rights came under the possession of Mr. Seufert; that was among themselves.

Q. Did that meeting with Mr. Seufert happen only once or other times?

A. I said to friend Seufert at different times I would like to catch fish for myself for my own use, because I needed salmon, and I would like to catch them myself for my own use; and it was all in vain.

508 Q. How does he mean "all in vain"?

A. No. No, he told him no.

Q. What?

A. He said no you can't catch any fish.

Q. How many times did he tell him that?

A. I don't know the number of times that I could say, but I know

that I came very near every year to get salmon; as the year passed by I came to get salmon.

Q. Did he ever try to get any at Wah-sucks?

Interpreter: Him? (Pointing to witness.)

Q. Yes, personally.

A. No, I didn't. I know that was under Mr. Seufert's possession and I didn't go there any more.

Q. The interference by Mr. Seufert with your fishing was above the cannery at different points?

A. Yes, up above.

Q. What was Wah-sucks noted for with respect to its fishing?

A. He says that the Indians spoke of Wah-sucks when he was a small boy, and this Wah-sucks was known from clear back immemorial, away back in our fathers' days.

Q. What was the important thing about it, the quantity of fish or the time of fishing?

A. It seemed by what the old people said that was the early fishing place, earlier than the other place. Of course when the fishing place went dry, why they moved some place else.

Q. Where did they go?

A. They generally moved up the river.

Q. Where to?

A. They worked their way up the river as far as Skein.

Q. Did the Yakimas follow this habit or not?

509 A. They had to. To fish, they had to follow up the fishing points as they got ready up the river, all of them.

Q. How about the Indians on the south side; what did they do,—the Wascos?

A. It depended on what their circumstances was in the fishing. If they could not fish on this side they would have to go over where there was the best fishing on the other side above.

Q. And they all went there, all the tribes?

A. Yes, wherever there was fishing they all came together there to fish.

Q. How long did they stay at Wah-sucks?

A. It all depended on how long the water was high enough for salmon to be caught. If it fell quick, why the fishing would run out; some time it would not fall so quick.

Q. When they caught the fish at Wah-sucks what did they next do?

A. When they fished there and got the salmon, cut them up and dried them.

Q. What did they do with them then?

A. Well, that was for their winter supply. They would put it together and put it away, take it away.

Q. Where did they take it to? That is what I want.

A. Before the agency was established for the Indians at the Yakima, they used to live there, and they would take their fish wherever their headquarters would be for the winter.

Cross-examination.

Questions by Mr. Bennett:

Tell him he says now he was 73 years old, and ask him if he didn't testify in the Seufert-Olney case that he was only 65?

A. Not that I know of, he says.

510 Q. Ask him if he remembers the case of Seufert v. Olney that was tried over at Yakima?

A. I remember the case that you speak of, but not giving my age at all that I know of.

Q. Ask him if he remembers testifying in that case?

A. Yes, I do remember testifying.

Q. Ask him if Mr. Avery, the United States District Attorney, was appearing over there for Olney, and asking him questions when he was on the stand?

A. Well, he said, the thing is kind of dim to me, but I believe it was just that way; but I cannot say it really was, but I think it was.

Q. Ask him if he had an interpreter over there?

A. I have forgotten now whether I did or not, or who he could have been.

Q. Well, now, ask him if he was not asked by Mr. Avery how old he was, and if he didn't answer 65 years?

A. Do you remember that I did say that?

Court: How old does he say he is now?

Mr. Bennett: He says he is 76 now.

A. He asks do you remember that I said that? Do you hear me?

Q. Yes, that is the way it is down.

A. Well, you heard me, he says you heard me, yes.

Q. Yes. Well, that is the way I heard it.

A. If you heard me, he said it might be so.

Q. Now ask him if he knew Governor Stevens?

A. I never knew him personally, but I have heard there was such a man.

Q. Ask him if he remembers the time when Governor Stevens made the treaty with the Indians?

511 A. I didn't see him, as I said before. I didn't see Governor Stevens, only that my people were talking about it and I overheard them, that Governor Stevens wanted to make a treaty with them for to become friends for all days to come. That is, I heard my people talking about it, but I didn't hear it myself.

Q. Ask him if he was a little boy at that time?

A. He says I was a boy just about that tall.

Q. That is about,—what is that? Three and a half feet high?

A. A boy about that high. I don't remember about the treaty, but I heard the people talking about the treaty afterwards. That is all I know.

Mr. Bennett: It may be stipulated that he shows about three and a half feet high.

Mr. Rankin: That is, the Interpreter shows that high.

Mr. Bennett: Yes. You don't make any question but what that is what the witness said to the Interpreter?

Mr. Rankin: No, not at all.

Q. Ask him if in the early days his tribe, the Skein tribe, had a language of their own, different from the Wish-hams.

A. They had two different languages, though they understood one another enough to conduct any affairs among themselves.

Q. Now ask him if his father is dead.

A. He is dead, yes.

Q. Ask him how long he has been dead.

A. I think along about fifteen years ago. I think that.

Q. Ask him if at the time of the war Kami-aken was the big chief of all the Indians over there.

A. He was not over our people on the Columbia River. He was only over part of the Yakimas the other way; the other way, but not down to the Columbia River; down to them; he was not a head over them.

512 Q. Ask him if he remembers Kami-aken?

A. I never saw Kami-aken; only by what my people said about him; that is all I know.

Q. Now, ask him if in the early day his people were not afraid of the Snake Indians?

A. He says yes. They were the only tribe that other tribes were enemy to. They were the only tribe, the Snake tribe.

Q. Well, ask him if his people were not afraid of the Snake Indians in these early days?

A. Yes.

Q. Ask him if they were not afraid to go on the Oregon side of the river for fear the Snake Indians would get them?

A. They didn't come down to the river. They lived away off at the Warm Spring country; that is where their home was.

Q. Well, ask him if his people did not stay on the north bank of the river all the time on account of the fear of the Snake Indians?

A. Perhaps you don't understand, I belong on the other side, always did.

Q. What say?

A. Perhaps you didn't understand. I belong on the other side of the river. I belong over there, only as I come over to fish.

Q. Now, ask him if they were not afraid to come over on the Oregon side to fish, or for any purpose, for fear of the Snakes?

A. Why, he says I just now told you they didn't come to the river, the Columbia River, to us. They lived in their own country; they were all afoot; they had no horses to travel with. They were poor; they could not go anywhere of any distance afoot.

Q. He means the Snake Indians?

A. Yes, the Snake Indians.

513 Q. So he says they were not afraid to go across the river on account of the Snakes in an early day?

A. They never made themselves dangerous here at the Columbia

River; they never made themselves dangerous to us here. We were not afraid to go across.

Q. They were not afraid to come across?

A. No. The Piutes did not make themselves dangerous at the fishery.

Q. Ask him if this talk he had with Mr. Seufert about fishing, in which Mr. Seufert objected to him fishing, was not all about a seining place a little ways below Skein.

A. Yes, at the place down below he said was where we had the words.

Q. Ask him if he ever asked Mr. Seufert to let him fish with a dip net or a spear?

A. I asked Mr. Seufert to use a long net, something like what the white people had, to get some salmon for myself. I asked the privilege of fishing that way with a long net.

Q. Ask him if he ever asked Mr. Seufert to let him dip with a fish net or spear?

A. No.

Q. Ask him if he didn't want to go on the sand-bar, where Mr. Seufert was seining, with two or three teams of horses and a long net, four or five hundred feet long, and drag it across Mr. Seufert's land and fish from the sand-bar in that place?

A. When Mr. Seufert is done fishing there, we come afterwards to fish like you said. Sometimes we would catch one, may be two, and sometimes none, after he is done with the fishing place.

Q. Well, ask him if he didn't want to fish there with his teams at the same time Mr. Seufert was fishing there?

514 A. I asked for his permission but it was denied at the time where he was fishing.

Q. Ask him if he was interested with Mr. Olney in doing that, and if that was what the trouble was about?

Court: I don't think we need to retry that case.

Mr. Bennett: No, your Honor, but I just wanted to show that Mr. Seufert had not acted arbitrarily about it. And I also wanted to show in this connection that this Indian was not and did not claim to be, or did not at that time claim to be, a dip-net fisherman. It will only take a few minutes, your Honor.

Court: Very well.

A. He says that I did try to have him be with me in fishing awhile I tried, but we didn't—

Q. Ask him if he didn't tell Mr. Seufert in that conversation that he has talked about, that in an early day, before the white men came to the country, the Indians used to have long nets, four or five hundred feet long, like the one of Mr. Seufert's, and fish with them, and claim that because of that he had a right to fish there then?

Mr. Rankin: Now, if your Honor please, I think that is going back into the testimony of the Olney case.

Court: I don't think we need go into that to solve what we have before us here.

Mr. Bennett: If they have gone into conversation, your Honor, haven't we a right to have the whole of it? They have gone into conversation of Mr. Seufert's at that time.

Court: Not particularly about this matter. They inquired about Mr. Seufert's conversation with this man as to his right to fish over there, but not to the extent to which you are carrying it. I do not think it is necessary to go back to that case to try this case.

515 We have one question here that is vital, and outside of that

I don't think there is much need of going further. That is confined to this fishery here at the point in question. There has been some testimony that they did fish there with a seine, a short seine; and how they fished at other special points I think does not make any difference as to this point.

Mr. Bennett: Then I would like, your Honor, to make an offer in this connection, and that will abbreviate it so that it won't take any length of time. We offer to show in answer to this question and others along the same lines that succeed it, that he claimed in that conversation that he has testified about in his direct examination, that in an early day, before the whites came to the country, the Indians had long seines about four or five hundred feet long, the same length as Mr. Seufert's seines that he was then using, and that they fished in the same way except that they used a great number of men—35 or 40 men—instead of horses, and made that the basis of his claim, and that he testified to that in the other case; and that he said in the other case that he had never fished with a dip net, but that his way of fishing was exclusively with these long seines at that place.

Court: That is on the other side, where the Olney fishing was.

Mr. Bennett: Yes, that is on the other side of the river.

Court: I think I will sustain the objection. You may save your exception if you like. But I do not like to encumber the record with too much outside matter, because it is taking a very long time to get through with this case, and I would like to get through with it.

Mr. Bennett: I know it is taking a long time, your Honor.

Q. Ask him if he ever claims to have fished with a dip net
516 himself?

A. Not at that particular place.

Q. Where, at Kum-sucks?

A. Here where the seine was used, not fishing with a dip net.

Q. But does he claim to have ever fished with a dip net at all?

A. I have never swung a dip net myself in my hand at any time.

Q. Ask him what he was going over to Kum-sucks for after he was
a man grown, if he never fished with a dip net?

A. He says my father's men done the fishing; my father's men.

Q. Ask him if that is the only reason he can give for going over there after he became a man grown?

A. He says my father's people fished there as I said, and other Indians fished there as I said, at the acquainted places where they all fished.

Q. Ask him if he doesn't claim that his fishing place was always over on the Washington side, close to Skein.

A. I think I have already said the reason why I came over on the Oregon side, on account of the early fishing; we came across in our canoes, then walked down to Kum-sucks there.

Q. Tell him he doesn't answer my question. Ask him if he didn't always claim that his fishing place was over on the sand-bar below Skein, and that that was the place where he always fished?

A. I don't know as I said that that particular place was my own.

Q. What say?

A. He says I don't know that I have said that particular place was my own individually. I don't think that I said that. But he says that my people fished there, and other Indians fished there backwards and forwards, like the white people here in Portland. I see them going up the street and going down the street and going
517 across the river. And what are they for? They are gathered for working. That is just the way Indians worked at that fishery.

Redirect examination:

Q. You spoke about the Indians coming across in canoes. Where did they come across?

A. Well, he says they used to cross there close to Mr. Seufert's cannery, down here below. That is one place.

Q. What did they call that place, if it had a name?

A. Nuch-tas.

Q. Nuch-tas?

A. Yes, that is where they crossed.

Q. Did they cross any other places?

A. And down to Wah-sucks was a crossing place there.

Q. At Wah-sucks did it have a name, the crossing?

A. Oh, no, no. It had no name. It is just only a crossing.

Q. Where did they land on the Oregon side, at Wah-sucks?

A. Just a little below Wah-sucks there.

Q. Below where?

A. Below Wah-sucks there.

Q. Below the rapids?

A. Yes, below the rapids.

Q. And where did they leave the Washington side?

A. There was a canoe remained there on the Wish-ham side, the opposite side of this place, where they tied the boat on this side, and the Wish-ham Indians generally came down to that canoe to cross.

Q. Was that canoe there all the time?

A. The canoe was there all the time.

Q. Explain how that canoe happened to be there all the time.

A. The canoes were furnished by the leading men, and also sometimes canoes was owned by the men that made the canoes. They had canoes.

Q. What was the situation with this canoe below Wah-sucks that he spoke of? Did it belong to some of the leading
518 men, or did it belong to some of the other Indians?

A. Generally there was a canoe on Wah-sucks, yes, about the same way on the other side.

Q. Well, I want to know whom it belonged to.

A. You know, perhaps, always there is a leader among Indians, and the leading man always furnished the canoe, or whatever was to be furnished, and everybody looked up to him.

Q. This particular canoe at Wah-sucks, that he has in mind, or if more than one, to whom did the canoes belong?

A. I said it belonged to the leading man. That particular canoe there belonged to that leading man for the Indians.

Q. What was the leading man's name?

A. Now, on the other side, to answer your question, on the other side, on the Wish-ham side there was Seelatsee was a canoe builder; and another one, another leading man on the same side, Colwash, he made canoes and furnished canoes, a leader.

Q. Now, the particular canoe below Wah-sucks, did that belong to either one of these men?

A. Tell the young friend that I cannot call the names. I have forgotten, it has been so long, the leading man on this side that owned the canoe.

Q. Where did Seelatsee—Was that Frank Seelatsee's father?

A. Yes:

Court: How is that material?

Mr. Rankin: I wanted to show who owned that particular boat.

Court: You can ask him what tribe owned those boats, the particular one. You can ask him what tribe owned that particular boat crossing at Kum-sucks.

519 Mr. Rankin: All right, your Honor; I will get at that.

Q. What tribe owned the particular boat at Kum-sucks?

A. Now, the tribe that Wasco Charley belonged to, that is why he is called Wasco Charley, that canoe belonged to the Wascos on this side.

Q. Belonged to the Wascos?

A. Yes, sir.

Q. Now, where did Seelatsee have his canoes?

A. He says, I believe I have stated once before that Seelatsee canoe, and the other man on the other side, and they crossed from them.

Q. Were they just opposite each other?

A. Very near opposite.

Q. Did Seelatsee have canoes any other place?

A. Seelatsee had other canoes above.

Q. Whereabouts above?

A. One place above Tenino, away up above Tenino he had a canoe there.

Q. And whereabouts on the Washington side, if he had any canoes on the Washington side?

A. They generally had canoes on each side, the Indians from this side and the Indians from the other side.

Q. State whether or not those canoes are located at or near the crossings that the Indians used.

A. He says there was always certain points where they left their canoes and tied them, and where they went across backwards and forwards, certain places.

Q. Could any one use those canoes or just the owners of them?

A. Those canoes were free to any one who wanted to cross.

Q. Whether a Yakima, Wish-ham, Wasco?

A. Yes, the canoes were free. There was no payment to
520 be made in the use of the canoe by anybody.

Q. What became of those canoes when the water rose?

Court: I don't think you need go into that.

Mr. Rankin: Very well, your Honor.

Q. How did they fish at Wah-sucks?

A. They fished with dip nets and with spears sometimes.

Q. Did not fish with long seines there?

A. No.

Q. Why?

A. Well, right at the main fishing place it was too rocky for seine.

Q. What country did the Snakes have, Snake tribe?

A. They were clear out to the Warm Springs, even beyond; clear back, away south and east.

Q. Were there other tribes that lived between the river and the Snake Indians' country?

A. Between the Columbia River?

Q. Yes, between the Columbia River and the country occupied by the Snake Indians?

A. Indians never lived in that section of any time only when there was a big crowd of them, big company of them went together to hunt and dig roots. That was only time Indians were over in that direction, when there was big crowd of them went over there to hunt.

Q. Were the Wasco friendly or unfriendly with the Snake tribe?

A. Yes, they were enemies to the Snakes, and in fact the Snakes has always been enemies to other tribes far and near, as far as we know, that they were enemies to other tribes; and they took
521 things, and stole things, and ran in and out, and they were bad people.

Q. Tell him to explain to Judge Bennett and the Court about his age.

A. Remember that Indian does not count his years, the olden time Indians. Now my age has only been a guess work by my people. They didn't say, that day you was born, or the month or the year. But after I was grown up, they said, you are so many years old. Now, whether they know exactly I cannot say, but I was just going by what my relation said of my age.

Q. Ask him if that is true of the older Indians in speaking about their ages generally.

Interpreter: About the older Indians?

Q. The older Indians, yes. Not the younger generation, at the present time, but the older men.

A. You may go any place or inquire among the old Indians, they will tell you the same thing. Indians never kept the record of their age, in time of the older Indians.

Recross-examination:

Q. Ask him if this crossing below Kum-sucks was down in the still water below the rapids.

A. He says that the crossing of Kum-sucks was close to the falls just a little below, where they could cross handy, is where they crossed over, a little bit below the falls or rapids.

Q. Ask him if they crossed down there because the water a little further up was too swift.

Interpreter: If it was too swift, you say?

Q. Yes. Ask him if they crossed down there because the water a little further up was too swift.

522 A. Yes, where the water was smooth, just where they crossed just below the rapids.

Q. Ask him if they had to climb down a high, steep hill or mountain on the other side to get to this crossing below Kum-sucks.

A. The Indians didn't have to climb down the highest rim-rocks by any means. They had trails up and down the river alongside the rim-rocks. They didn't have to climb up and down; they had trails along the river. Some places they had to go up and down, but then they had trails without going down a steep place.

Q. Ask him if they could get up along the river on the Washington side, from Kum-sucks up to the Big Eddy, on any trail close to the water.

A. He says yes, there were trails, of course not right down to the river banks, but there was trails along the river where they traveled up and down, in trails up to the other parts of the crossing. There were trails on both sides of the river.

Q. Close to the water?

A. No, he says not close to the banks, but back from the water they had trails to get up there.

Q. Ask him if he didn't have to go up a steep, high bluff to get on to those trails.

A. I have said the Indians never climbed up any hills or rim-rocks to get up away from the river from the canoe or down to it. There was trails leading to that canoe from different points from above the river.

Q. Without going up on any bluff?

523 A. No, not that I know of; not that I know of. I don't think that I know anybody ever climbed any steep hill, no.

Redirect examination:

Q. Tell him to explain how those trails were along from Big Eddy down below Three Mile with relation——

Court: Does the survey show the bluffs along the river bank there, and where there are openings between the bluffs so that you can get down to the water?

Mr. Rankin: Do you mean this survey?

Court: Yes.

Mr. Rankin: No, your Honor. This does not show the bluffs that are there, and there have been, as you recall, two Indian villages located here outside of those, as I understand. I don't think there is any dispute in the evidence or between counsel that down through here there are bluffs all along the opposite side of the river.

Court: I should think that could be determined by a survey, whether there are any places between Little Eddy and Big Eddy, for instance, by which the Indians or any persons can get down to the water's edge. That seems to be disputed now.

Mr. Rankin: My purpose was to ask about the old Indian trails that ran back.

Mr. Bennett: I will say, your Honor, that we do not make any question but what it is possible to get up along here. We do not make any question but what there are places along here.

Court: That goes into Little Eddy?

Mr. Rankin: Yes.

Court: That has been described two or three times.

Mr. Bennett: That a man can get up those bluffs and then
524 get up here on top of these bluffs and go across here and there are places where you can get down to the Big Eddy.

Court: Now, from Little Eddy along the bank there up to the lower part of Big Eddy, do you deny that there is any place to get down along there?

Mr. Bennett: I don't think there is any place.

Court: I think one or two of the Indians have indicated that there was a place to get down pretty nearly opposite that landing above Seufert's.

Mr. Bennett: Well, there might possibly be a place here, your Honor, where they could get down.

Mr. Rankin: How about those two Indian villages there? Couldn't they get down from back there?

Mr. Bennett: No, I don't think so. There may be a place here where they could get down.

Mr. Rankin: Let me ask him about those.

Q. Do you know whether or not there were Indian villages on the Washington side?

Court: I would not go into those villages with this man. I think that cuts but very little figure. The crossing is what we want to get at. If you can establish those crossings it will be worth something in this case. Unless you can do that, I don't think that it helps the case very much.

Mr. Rankin: Yes, your Honor.

Q. Do you know whether or not there were any crossings near Seufert's cannery, but above Five Mile?

A. Yes, there was a point for crossing above the creek there.

Q. Where was that, on the Washington side? Where did they land on the Washington side from that crossing?

A. Nieh-tan was opposite of this point that I have mentioned.

525 Court: The other Indians have been testifying about the same thing. I think so far the testimony indicates that there was a crossing down at Kum-sucks, a landing above Kum-sucks, and that crossing probably entered at Little Eddy, and probably coming across the stream, running up the stream rather than down; and then there is one crossing below, and then there is another crossing where the landing is opposite a place just above Seufert's Mill. And then there is another crossing which enters at Big Eddy and then comes down, and perhaps they can land nearly opposite or perhaps they come down to the landing just above Seufert's factory. Now, it is not necessary to cover the whole field other than those three crossings. They have been now pretty well located, and it is not necessary to take up the time of the Court in leading these Indians as it is very hard to get out of them what they know. In that way I think we can curtail some of this lengthy examination.

Mr. Rankin: Very well, your Honor. I shall bear that in mind with the other witnesses. But I would like the privilege at this time of following up this crossing across the river to find out where it is.

Court: You may ask him about that.

Q. After they crossed the river at that crossing at Nich-tas where do they land on the Washington side when they cross at Nichtas?

Court: He has already said as to that, about opposite that landing.

Mr. Rankin: I wanted to know whether or not it is villages, or whether it is Big Eddy.

Court: He said it was about opposite. Big Eddy is not opposite there by any manner of means.

Excused.

526 ROBERT SMITH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Talk to me in English if you can. What is your reservation, Robert?

A. Warm Spring.

Q. How long have you lived on Warm Spring?

A. I have lived on Warm Spring about 63 years, no, 58 years.

Q. How old are you Robert?

A. Well, I was born there.

Q. Born there?

A. I was born right there.

Q. And how old are you, do you know?

Court: Didn't he say about 58?

A. Well, about 58.

Q. Are you acquainted with fishing places on the Columbia River above The Dalles?

A. Yes, sir.

Q. What is the first fishing place on the Columbia River above The Dalles?

A. You mean on the lower side of the fishing place, is that what you mean?

Q. On the Oregon side.

A. You mean on the lower side of the fishery, is that what you mean?

Q. Any fishery along there.

A. The lower part of the fishery, that is where the fishery enters Wah-sucks.

Q. And where is the fishery itself, where the men fish?

A. Well, there is two fishing points right there at Wah-sucks, two of them.

Q. What are they called?

A. Kum-sucks, but, well, the other one I don't know what they call it.

Q. Do you know where it is?

A. Oh, yes.

Q. Have you fished there?

A. I fished there when I was a boy, yes.

Q. At about that place?

A. Oh, yes.

Q. What was there important about those fishing places?

A. Well, because in the Spring, sometimes it depends on the water, you know, as the river raises up, you know, where Indians fish there first.

Q. Do you know what Wah-sucks means?

A. Yes.

Q. What does it mean?

A. It means pine tree.

Q. Where was that pine, if you know?

A. Well, the pine tree, as far as I can remember it, stood right a little above Gulick's house there. There is a kind of a gap.

Court: Is that tree there yet?

Mr. Rankin: No, sir.

A. That tree was cut; somebody cut it.

Q. What became of that tree?

A. It was cut; somebody cut it.

Q. How long ago?

A. Oh, I don't know. Let's see. The last time I think I was down there about six years ago, and I never noticed that tree any more.

Q. You never noticed it?

A. No.

Q. What was the last time you remember seeing it?

Court: I guess no one denies but that pine stood there at one time.

Mr. Bennett: I don't know of any pine there, your Honor. I don't know anything about that. I never knew of any pine there.

Court: Well, go ahead.

A. The last time I seen that tree, I think it was about twenty years ago.

Q. Who cut it, do you know?

A. I could not tell you.

Q. How did they fish at Wah-sucks?

A. They fished with dip net.

Q. Any other way?

A. No.

Q. Who fished there?

A. You mean Wascos?

Q. Well, what tribes fished there?

A. Well, Wascos fished there, and also Washington side Indians came over there and fished.

Q. What were those Washington side Indians called?

A. Wish-ham.

Q. Wish-ham. Any other Indians besides Wish-ham?

A. Well, Klickitats.

Q. Any others?

A. There is other, we call them in regular Indian, is Ich-ah-ducht.

Q. What is the English or American name, white name, for Ich-ah-ducht?

A. Well, I suppose they call them Klickitats now.

Q. What were the relations of the Indians at that point?

A. Well, their relation is you know, they came over and our people, you know, went over, and they married one another, you know.

Q. Friendly?

A. Oh, yes.

Q. Were there any boundaries that they recognized, about 529 not being allowed to fish at places?

A. Well, the boundary was never known at that time, no, there was nothing that I know of.

Q. What did the Indians do about that?

A. (Asks Interpreter.)

Q. What did the Indians do about boundaries? They didn't recognize boundaries; what did they do about boundaries?

Interpreter: There was nothing to separate the Indians, was there, witness?

A. No, sir.

Interpreter: No boundaries.

Q. You belong to the Warm Springs tribe?

A. I am Wasco.

Q. Did you recognize a right of the Wascos to fish there?

A. Yes.

Court: You mean Yakimas?

Mr. Rankin: Yes, your Honor.

Q. The Yakimas?

A. Yes, sir.

Q. And the Wish-hams?

A. Yes, sir.

Q. And the Klickitats?

A. Yes, sir.

Court: Mr. Rankin, when the Government took possession there and cut off that rock, as they have, they destroyed part of that fishery, didn't they?

Mr. Rankin: Yes, I suppose the testimony will show that they did.

Court: Well, now, does the Government claim a right to occupy that as against the Indians?

Mr. Rankin: That has never been called into question, your Honor.

Court: Now, again, does the Government allow any fish-
530 wheels around there where they have made the improvement?

Mr. Rankin: They have been there. I think the evidence shows that Sam Williams fished there from 1910 to 1914.

Court: I mean, immediately around where they have made that excavation.

Mr. Rankin: Yes, right there at that point, after it was taken off; and Mr. Seufert had his wheel there last year as well.

Court: Well, now, since the main fishing point has been destroyed there, where do you locate the other two fishing points?

Mr. Rankin: The other two fishing points, the testimony is by Mrs. Gulick, who has lived there some time, that one is just above there, and Mr. Smith testifies he knows of another. I have not located the second one.

Adjourned until 10 A. M.

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PORTLAND, OREGON, January 27, 1916—10 a. m.

ROBERT SMITH, resumes the stand.

Direct examination continued:

Q. Mr. Smith, the old Indians, did you ever hear them name that country from the lower part of Three Mile Rapids clear on up through to Celilo? Did you ever hear them give that one big general name?

A. Yes, that was the case, that the old Indians away back counted that as one piece on the Oregon side, clear up to Celilo.

Q. Did they give it a general name, and if so, what was the general name?

A. Robert Smith says that all the fishing points are named clear on all the way up to Celilo. If you want the names perhaps I could give them to you.

Q. No, I don't care for the names of the individual places. I wanted to know if they called just all that country, generally speaking. The Dalles fishery?

A. It is the Wasco. It is called the Wasco and Celilo fishing.

Q. Now, yesterday he testified to the fact that the Indians crossed over. After they crossed over, where did they camp, those Indians that did cross? Where did they camp?

A. On the Washington side or the Oregon side?

Q. On the Oregon side; crossed over to Wah-sucks, where did they camp?

A. He said they generally camped around about where Mr. Gulick's camp is, camped around all over them rocks there.

Q. On high ground or low ground?

A. He says the ground is kind of high. It is on rocks.

Q. Ask him if that is the upper part, the higher part of the so-called island?

A. Really, he says it is an island. It is a big portion of it is rock, and one part of it is kind of sand; but it is an island.

Q. Ask him if they camped on the upper part of that?

A. Yes, that is just where they made their camps.

Cross-examination.

Questions by Mr. Bennett:

— Mr. Smith, didn't the Indians camp all over that country?

Court: Mr. Smith, answer his questions, if you can, direct.

A. Tell the Judge for me that Indians fish and camp there; wherever they fish, why they camp, and whenever they move away to another point of fishing, not every place—

Q. You tell him to answer me in English.

Mr. Ranklin: Tell him the Court tells him to do that, talk in English.

A. Well, as far as the Indians has fished, whichever the fishing point comes, so the Indians could fish, why they go there and camp. If the water gets too high they move up the river and camp some place else.

Q. They also used to camp down about The Dalles, didn't they, lots of times? The Indians used to camp down about The Dalles lots of times, didn't they?

A. I never saw any Indians camped at The Dalles during fishing time, I never did.

Q. Well, did you at any time?

A. I never did see anybody camp in The Dalles that I know.

Q. Do you know where Mill Creek is in The Dalles?

A. Yes, I know where Mill Creek is.

Q. Didn't the Indians use to camp right across Mill Creek, on the rocks there, in those little basins there, on the other side of Mill Creek from The Dalles?

533 A. Yes, I have seen a couple of Indians camp there, yes.
Q. Didn't a good many Indians camp there sometimes in the early days?

A. Not that I know.

Q. Did you ever camp there?

A. Right at The Dalles, at the Mill Creek?

Q. Across Mill Creek from The Dalles?

A. I camped there on-time, yes. When I came down after freight I camped there, yes.

Q. Weren't there other Indians camped there?

A. I didn't see anybody camped there the night that I camped there, no.

Q. Didn't the Indians use to camp down there on the bottom in an early day, about a mile and a half above The Dalles, on a grassy flat there was there, between the river and the bluff? Didn't they use to camp there and run horse races?

A. Not that I know of.

Q. Didn't they have a race track down there on that flat?

A. I could not tell you anything about that. I am not on that race business, no. I could not tell you anything about it. I don't know.

Q. You never saw them camp down there?

A. No.

Q. You never saw them horse-racing down there?

A. No, them kind of places, friend, I don't go, no.

Q. Was your father a white man?

A. Yes; sir.

Q. And your mother was a Wasco Indian?

A. Yes, sir, Wasco Indian, and half Wish-ham, my mother was.

Q. There was not any Warm Spring tribe really, was there, just four or five tribes that were taken out there to the Warm Springs?

534 A. You mean moving to the Warm Springs?

Q. I mean in the early day there was not any tribe that was called

Warm Springs before they had the reservation there? It was the Deschutes and the Tyghs, wasn't it?

A. No, there was——

Q. The Deschutes and the Tyghs and the Wascos?

A. Teninos.

Q. Well, the Teninos and the Celilos, they were the lower Deschutes, weren't they?

A. Yes.

Q. Well, now, it was the lower Deschutes and the upper Deschutes and the John Days and the Tyghs and the Wascos and the Cascades. They were the six tribes that went out there on the Warm Springs, weren't they?

A. Yes.

Q. And since they have got out there on that reservation they call them all Warm Springs sometimes?

A. Yes, they call them all Warm Springs.

Q. Now, whereabouts on the reservation out there, do you live?

A. Well, I am with the Wascos.

Q. Well, I know. But you know where the Agency is there, and where the Cinna Marsh is, don't you?

A. Certainly I know that.

Q. And Neena and all those parts, of course?

A. I know every part of the reservation, yes, I think I do. It is my home.

Q. And the Warm Spring river. Now what part of it do you live on, that is what I want to get at.

535 A. I live about four miles from agency, going down the creek, and then a piece up to the Deschutes River; the first house from the old ferry, that is where I live.

Q. Over on the Deschutes River?

A. Yes, sir, over on the Deschutes River, that is where I am.

Q. Have you a ranch there?

A. Yes, I have a ranch there.

Q. And cattle and horses?

A. I have no cattle. I have horses.

Q. Now, you say you were the last time at this point called Kumsucks about six years ago?

A. No. I said yesterday eighteen years, I thought that was the last time I was down there.

Q. How long?

A. Eighteen years.

Q. Three years?

A. Last time eighteen years.

Q. Eighteen years?

A. Yes, sir, last time I fished.

Q. Well, but haven't you been there for eighteen years at all?

A. Well, I have been there once since that.

Q. Well, you said that was about six years ago, didn't you, that you were there the last time?

A. I don't remember saying that.

Q. Well, was it about six years ago that you were there the last time?

A. Well, I was there one time between ten and six years, somewhere there.

Q. Between ten and six years ago?

A. Yes, that was about, I suppose, the last time I was there. Of course I came down two or three trips to The Dalles, but then I didn't go up to the fishery.

536 Q. How old were you the last time you went there to fish yourself, as you claim. About how old were you when you went there to fish yourself? Were you just a boy?

A. No, I had a woman then; I was not a boy, no.

Q. Well, about how old were you, as near as you can remember?

A. As near as I can remember I think I am about 58.

Q. I am not asking you how old you are now, but I am asking you how old you were the last time you went there to fish?

A. Well, I could not say very well. You see, the Indians they don't count their ages at all.

Q. Well, was it about the time you were married?

A. No, it was after.

Q. After you were married. Well, how old were you when you claim to have fished there the first time?

A. Well, the first time, I was with my old people, when I was there I suppose was about, well, I was a little chap; I suppose I was about eight or nine, something like that.

Q. Now, how old do you say you are now?

A. I am about 58; just about 58; that is the way I judge. Of course, I could not give you the very date that I was born.

Q. Do you remember who was the agent on the reserve when you can first remember—as far back as you can remember? Who was the first agent on the reserve that you can remember?

A. The first agent, you mean?

Q. Yes, the first one you can remember.

A. Captain Smith is one of the first as far as I can remember, Captain Smith.

Q. That is as far as you can remember. Now that was along about 1876, wasn't it; or do you know, can you tell about that? You can't tell about that, can you?

537 A. I could not.

Q. All right. Now, Mr. Smith, you know where the Neeny is there?

A. Certainly I know it.

Q. And you know where Wapinitia is?

A. Certainly.

Q. Oak Grove, it used to be called.

A. That is the old name, yes, Oak Grove. Yes, I know where it is.

Q. Well, now, the line of the reservation is on the top of, runs along the top of the hill between the Neeny and the Oak Grove, those two little creeks, don't it?

A. No, sir.

Q. It doesn't?

A. No, sir. Whites claim the line runs on top of the ridge, but that ain't it. It runs on the shady side of the Wapinitia hills there; that is the right line, yes, sir.

Q. Runs where?

A. Runs on the north side of the Wapinitia hills; about half way.

Q. On the north side?

A. Yes, sir.

Q. When did you first know that? Ever since you can remember?

A. Well, I could not say that I went there until this trouble came up about this line question, you know.

Q. Yes, about where the line was.

A. Yes, sir.

Q. That is, the Indians up there and the whites disagreed about where the line was?

A. Yes, sir. Whites claimed one place, and us Indians claimed the other.

Q. Now, these two places were about how far apart?

A. Oh, I don't know. I could not tell you. I never measured the distance.

538 Q. A mile or two apart?

A. Oh, they are further than that.

Q. Well, now, the Indians all knew where the line was, didn't they, as they claimed it?

A. Yes, the Indians know their line, and then that is the line they know.

Q. The Indians, as far back as you can remember, all knew that the Deschutes River was the other line of their reservation, didn't they? That the Deschutes River was the line on the other side?

A. No, sir.

Q. What say?

A. No, sir.

Q. Where did they claim the line was over there?

A. The line runs from point of Mutton Mountain, runs right straight, and it cuts the Deschutes across, and rides right on the middle of what they call Agency Plains. It runs south from the point of the Mutton Mountain. On the other side it runs west right across the Deschutes, and it cuts half of those plains.

Q. Did the Indians all know, as far back as you can remember, where that line ran?

A. Yes, sir.

Q. That was the line between them and the white people?

A. Used to be.

Q. Yes, that is what I say, used to be.

A. Yes, that was the understanding when the treaty was made.

Q. Now, you have worked along the Columbia River quite a lot, haven't you?

A. Yes, right at the falls, yes.

Q. What say?

539 A. Yes. Right along there at the falls, yes. We fished there quite a little bit, yes.

Q. You fished from Mr. Seufert's place all the way up to Celilo, didn't you?

A. I never did fish up at Celilo, no. I went and bought fish, that is dry fish, up at Celilo, but I never fished in my life at Celilo.

Q. Whom did you buy fish from, the other Indians?

A. Yes, I bought fish from my friends, Indians; dried fish.

Q. You fished below Celilo?

A. Yes.

Q. And farther down to the Seufert's cannery?

A. No; there at Kum-sucks; Lone Pine; whatever you call it.

Q. Did you fish above Seufert's cannery a little ways, half a mile or a mile above Seufert's cannery?

A. Yes, I did at Wasco, what they call Wasco, where that fall——

Q. You fished there. That was where the choke cherries were, was it?

A. Oh, no, no. The choke cherries is right there where Jake Andrews' house is, you know. That is what they call Choke Cherry Crossing, you know.

Q. Was Wasco above the Choke Cherry Crossing, or below?

A. Oh, no; I am talking this away up. I don't know about how far it is. A mile or a little bit over. You know where the railroad bridge was, and they fill the place there, you know; that is the main where we call Wasco. There is a rock, you know; there is a little spring where they had a rock like a hand go in; Indians get water. That is what we are named for, Wasco, you know; that is what we are named from, us people, Wasco.

Q. That was about how far above Mr. Seufert's cannery?

540 A. Oh, I don't know. Probably it is a little over a mile or so. I could not say.

Q. You worked for Mr. Seufert in the cannery there, didn't you, when you were a boy?

A. No, I didn't stay but one time when my wife was sick. I brought her to The Dalles. I went up there and stayed with him—I don't know, I suppose four or five days, I guess.

Q. Four or five weeks?

A. No, no; four or five days, I said.

Q. Oh, I did not understand you; four or five days you stayed there.

A. Yes, sir.

Q. Now, when you fished, did you fish with a dip net?

A. We used to fish, yes.

Q. Now, what kind of water is the dip net fishing in? Swift water, or falls, or little channels, or where?

A. Well, the fishing places, fishing points we had, was from ages and generations, you know, where it was picked out, why it is kind of eddies, you know, where the Indians fished, you know. Of course, they don't dip and work the dip net down stream; but

sometimes, some places they have where they put dip net in to hold it still, you know. And then that is the way we fish. And some part where we fish, well, after July, during August and so on, why we fish with a spear. That is above, understand me; that is above.

Q. When you fish with dip nets, you fish in swift water, and fish down the current, do you?

A. Well, it is kind of eddies, you know, where the Indians dip net, you know; it is the places, it is points, the fishing places.

541 Q. Isn't it the places where the water is swift? I show you Defendants' Exhibit C for identification, and ask you if that is not the kind of place where the Indians fish with dip nets?

A. Well, I could not tell you about this place, because I am not much of a paper man at all.

Q. You are not much of a fisherman yourself?

A. I am an Indian, yes, sir.

Mr. Rankin: Not much of a paper man.

Mr. Bennett: Oh, excuse me. I don't want to misquote at all, but I don't always catch——

Court: I understand.

Q. Well, you know, you can tell from that picture, can't you, whether that is the kind of place the Indians generally fished, in water like that?

A. Well, we fished in the falls.

Q. In the falls?

A. In the falls, yes. It depends what kind of fishing place it is, whether the water is running slow or whether the water is in eddies, you know.

Q. Below a falls?

A. Yes, sir. Depends on what kind of a fishing point we have.

Court: Mr. Rankin, was that last treaty with the Indians on this side in 1865?

Mr. Rankin: Yes, sir.

Court: Do you remember the treaty of 1865?

Mr. Rankin: I think that it is called the Huntington treaty.

Q. Do you remember the Huntington treaty, at the time Huntington went up there?

A. I was too small I think. I have heard about it, but 542 then I don't want to tell you about it.

Court: Well, have you fished off those rocks since that treaty was made?

A. By the falls, you mean?

Court: Off those rocks there at Kum-sucks.

A. I think so.

Court: You have. Do you recognize that picture?

A. I could not tell anything about that picture.

Q. You could not tell whether that is Mr. Seufert's cannery or not?

A. No. I don't understand much about pictures or anything of the kind. But if you want to find out about this fishing place right

today, I can take you up and show you the place where the Indians have point or fishing places, right up through.

Q. Does this point that runs out here look like the point where Kum-sucks was?

A. I could not tell you. My eyes is kind of dim. I can't see very good.

Mr. Bennett: I would like to have that marked for identification. Marked "Defendant's Exhibit E."

Mr. Bennett: We will show, your Honor, it is a picture of the place as it was before the point was blasted off.

Court: Very well. This is looking down the river, is it?

Mr. Bennett: Yes, this is looking down the river.

Excused.

543 FRANK SEELATSEE a witness called on behalf of the Government, being first duly sworn, testifies as follows:
Louie Brown, Interpreter.

Direct examination.

Questions by Mr. Rankin:

— Where were you born?

A. Place called Wish-ham.

Q. Is that on the Washington or Oregon side?

A. On the other side, the Wish-ham.

Q. What were your parents, what tribes did they belong to?

A. My old parents belonged on both sides of the river.

Q. Which side did your father belong on?

A. Wish-ham.

Q. And the mother, which side?

A. On the Wasco side.

Q. Is your father alive?

A. Died quite a while ago.

Q. When he was alive where did he live?

A. Over on the Washington side, where the people are living now at Wish-ham.

Q. About how old is he, this witness?

A. I could not say just how old, but I think about 55 years.

Q. When did he go to the Yakima reservation?

A. About twenty years ago, when I moved to the reservation.

Q. Before you moved to the reservation, what was the relation of the tribes of Indians living on the north bank of the Columbia and those living on the south bank of the Columbia, or between the Wish-hams and the Wascos?

A. They got along fine, nicely.

Q. Did the Indians on the north side, the Wish-hams, ever
544 fish on the south bank of the river?

A. Yes, I have known them to come over and fish there.

Q. How did they get over?

A. They come across in canoes.

Q. Where did they get the canoes?

A. My father is a man that built those canoes.

Q. Ask him to tell the Court about what position his father had in the tribe, and how he handled this canoe business.

A. There was four of those people called chiefs. Now, there was two of them that made those canoes, my father and another man; another man by name Colwash.

Q. Now, what did they do that for? Tell the Court generally about the business

A. They made those canoes for people to use to come across the river to catch fish.

Q. Were they paid for it, or why did they make them?

A. No one paid them. They made them just for the people to use to cross the river.

Q. Where did they leave them after they had made them?

A. They left them at different crossings.

Q. Where?

A. There was two left up at the upper crossing up there below Memaloose Island.

Q. What crossing was that?

A. In my language that crossing is known as Wi-ah-gwa.

Q. Tell him how they handled those canoes, how long they stayed there and what became of them, etc.

A. There is one canoe left up there that I know of. Bill Charlie has that canoe. It was made by Bill Colwash's uncle. That means the old man Colwash made it.

545 Q. Where is it now?

A. Bill Charlie has got it up at his place now.

Q. Now, tell about how they used these canoes from year to year. What became of them in high water time?

A. Those canoes that they built was used there all the time among the Indians.

Interpreter: Was that the question you asked?

Q. I want to know what became of them in high water? Who took care of them; how did they care for them?

A. At all of these landings where these canoes were used, there was always a place there where they could land it and take care of it; if the river was raising why, they had places there they tied the rope up; and that is the way they took care of it.

Q. Did they leave them at those points all the year around, or did they take them away at times?

A. Take it along in the winter for instance, like it is now, the river is full of ice; they go down there and take them out of the water, and take them up and lay them on the banks. There they keep them until the ice goes out again.

Q. He has testified that Bill Charlie has one of those canoes. What became of the others, if he knows?

A. Those others would be just like a person taking a skiff, use it until it is wore out and it is no good.

Q. What became of them if he knows?

A. I could not say what became of them, but they are not used

any more anywhere. They are gone. When those canoes got so old that the people could not use them to cross the river in them any more, why, they had no more use for them; they never took care of them.

Q. Ask him if his father, as one of the prominent men or
546 chiefs of the tribe, was charged with the duty of looking after canoes, or whether he did that as a voluntary act?

A. In our custom, the Indian custom, whenever a man like my father was called a chief, they did not know what it was to go and charge anybody for what they had. The only thing they asked for the people to do was to take good care of what they had and use it right and not tear it up or lose it.

Q. He has misunderstood the meaning of the word that I used there, charged. Was it his duty to provide the canoes and look after them, or did he just do it of his own accord?

A. No, sir; he was not charged to take care of these things. He done that just because he thought he ought to help people that way.

Q. Does he know Wah-sucks, the point Wah-sucks?

A. Yes, sir.

Q. Where was Wah-sucks?

A. Wah-sucks is a place which is above The Dalles, along about the foot of the narrows,—rapids some call it.

Q. Ask him if he knows where Mr. Seufert's cannery is now?

A. I know where it is located.

Q. Was Wah-sucks below Mr. Seufert's cannery?

A. Below.

Q. Has he ever seen Yakima Indians fish at Wah-sucks?

A. Yes, sir, I have seen the Yakima Indians fish there.

Q. Has he fished there himself?

A. Yes, sir, I have fished there when I got to be a man, young man, so that I was able to fish, I fished there with the rest of the people.

Q. How did he fish there?

A. With a dip net.

Q. When was the last time that he fished there himself?

A. The last time that I fished there I came from Yakima
547 and came over there and fished. I could not say just how long, but I think along about 13 or 14 years ago.

Q. Where did he cross the river?

A. I crossed there right there at Kum-sucks.

Q. How?

A. The last time I crossed there was in an old skiff.

Q. Where did he get it and what did he do?

A. There was an old skiff some of the old people had picked up floating down the river, and they patched it up, and that is what I used, and come across and caught some fish there.

Q. Where did he leave on the Washington side? On what point of the river on the Washington side did he leave when he came across? Was it Big Eddy, or Little Eddy, or below the rapids, or where?

A. It is a place called Cow-wa-shela, almost opposite this Kum-sucks, that is where I crossed and come over.

Q. Does the white man call that Little Eddy? Ask him if he knows where Little Eddy is?

A. I don't know that place called the Little Eddy.

Q. When he landed at Kum-sucks, did his boat work up across the river, or down the river, or how?

Interpreter: This place where he started from, you mean, whether he went up and across, or down? Is that it?

Q. Yes. When he landed at Kum-sucks.

A. From where I started I kind of come down the river, like, instead of going up, instead of coming square.

Q. Was there any place or village on the other side that is known to white men, that he can identify the place where he started from?

Interpreter: On the Washington side?

Q. On the Washington side?

548 A. No, I don't know that I could tell them anything where they could identify that place where I started from. As I said, I started from this crossing place there.

Q. Did he have any trouble getting down off the cliffs? Aren't there cliffs there right across, that come right straight down to the water's edge?

A. There is bluffs there, but there is a place there where you can come right down to the water there and get into a boat or canoe and cross over.

Q. Name some of the Yakima men that he has seen fishing there?

A. I remember of seeing Smiscon, Pok-now, fish there.

Q. Who else? Just go ahead and name them.

A. I have seen Bill Charley fish there.

Q. Who else?

A. Charley Dick. I have seen Loui Brown fish there. Do you want me to call the people that are living, or some of them that is dead and gone?

Q. Oh, I want him to call any of them, whether they are dead or living, as long as they belong to the tribes on the north side of the river.

A. My father has fished there.

Q. Just name them.

A. I have seen Louie Simpson fish there.

Q. Ask him if Louie Simpson is alive now?

A. No, sir; he is dead now.

Q. When did he die?

A. I just could not say when it was, but it was along perhaps about two months ago, or something like that.

Q. Does he say Louie Brown fished there with wheel or dip net?

A. With a dip net.

Q. Does he know Sam Williams?

A. Yes.

549 Q. Did he ever see him fish there?

A. Yes, I have seen him fish there.

Q. When first did he see Sam fish?

A. I could not say just exactly, but along about 20 years ago.

Q. How did he fish?

A. When I first saw him fish there I saw him fishing with a dip net.

Q. And when did he last see Sam fishing there, himself personally?

A. Perhaps about 13 or 14 years ago.

Q. How was he fishing then?

A. This last time he saw him?

Q. Yes.

A. I saw him there, he was dipping.

Q. Ask him if Frank Seelatsee himself is allotted on the Yakima Reservation.

A. Yes, sir. I have an allotment on the Yakima Reservation.

Q. What position has he there, if any?

A. I myself, I am a captain of police, Yakima.

Q. When the Indians crossed over from the Washington side to Wah-sucks, was there any village near Wah-sucks?

A. I saw a small village there; dry house.

Q. Whose village was it?

A. An old man by name Kuma-sick-sick.

Q. Wasco or Indian from the North side?

A. He was from Wasco side.

Q. Were there many people stayed in that village, or a few?

A. There was not very many. There was quite a few, too, in one way. I am going to name one man, that is Shin-wich, that lived there.

Q. Was Shin-wich a Wasco?

A. He was allotted on the Yakima.

Q. Allotted on the Yakima?

A. Yes.

550 Q. The places where the canoes were—how about crossing there? Could they cross any time?

A. When the water is the right stage at Kum-sucks to fish there, why, the people could cross there any time and come over and fish.

Q. After they got their fish, where did they take them?

Court: Is it necessary to inquire about that of all these Indians? I think that is pretty well established.

Mr. Rankin: Very well. That is satisfactory, your Honor.

Q. Why was Kum-sucks a valuable fishing place, if it was valuable?

A. It was valuable to the Indians because it was one of the early fishing points.

Q. Do as many fish there now as used to?

A. There is very few of them fishing there.

Q. Why?

A. There is a few people there yet.

Q. Why don't as many fish there as used to?

A. I am going to say this: It is hearsay that a man by name of Seufert has forbid them from fishing there to that place.

Q. Has he ever seen acts forbidding them fishing, acts or things?

A. I have not seen anything out of my own eyes of any trouble. I have plenty to do at home, and I never have time to run around anything like that.

Q. Has this been discussed among the Indians on the reservation?

Interpreter: This—

Q. So-called restraint.

A. I have heard that all the time, every summer, that name Seufert is quite familiar up where I live.

Q. Can you name any Oregon Indians who fished on the Washington side?

551 A. Yes, sir. A man by name of Robert Smith has been over there and fished.

Q. Any others?

A. Jim Jackson has been over there and fished, belongs on this side.

Q. Anybody else?

A. Man by name of Schlucken, better known as George Tommy.

Q. Anybody else?

A. Those men that I just recall, those I have seen there myself fishing; but those others, I could not say who they are.

Cross-examination.

Questions by Mr. Bennett:

Ask him if it was his mother and father, or his grandmother and grandfather, that he claims lived on both sides, one came from one side and one on the other?

A. It is my mother and my father, as I said; they belonged one on one side and one on the other.

Q. Ask him what he does on the reservation?

A. I am a policeman on the Yakima reservation.

Q. Ask him if he farms?

A. Yes, I have a farm there and I am engaged working for the Government, and my boys runs the farm. I am there.

Q. Ask him if he has cattle and horses?

A. Yes, we have cattle and horses. Children, all of us, have stock.

Q. Ask him if he has sheep?

A. No, he has no sheep.

Q. Ask him if he talks English?

A. Very poorly.

Q. Ask him if he has ever been to school?

A. Never been to school.

552 Q. Ask him if he cannot talk pretty good English?

A. I don't talk much English, because I cannot talk very good.

Q. He speaks about a crossing below Memaloose Island. Ask him if there are two Memaloose Islands along there?

A. There are two Memaloose Islands all right.

Q. Ask him if one is down close to the Big Eddy?

A. Yes, sir. There is one Memaloose Island there.

Q. Ask him if the other is up close by Wish-ham?

A. There is another one above Wish-ham.

Q. Now ask him which one it was he crossed, below the lower one or the upper one?

A. There is crossings below both of those Memaloose Islands.

Q. Ask him where the two boats were that he testified about awhile ago, below the upper island or the lower one?

A. This is the crossing that I had reference to, that had those two canoes at this upper one; and also there was two down here.

Q. Ask him when he last saw any Indian canoes at that lower place?

A. Oh, it must have been perhaps 25 or 30 years since I saw the last one at this lower place.

Q. Ask him where he got this old skiff that he patched up to cross with down at Kum-sucks?

A. It was landed there at Cow-wa-shela, as I called the place a while ago, that is where I found the skiff.

Q. Ask him how far below Kum-sucks?

A. It is almost opposite of this Kum-sucks.

Q. Ask him how long it took him to fix it up so he could use it?

A. I didn't say anything about my patching up this boat. I said that the old people picked it up, and they patched the boat up and left it there for people to cross in.

553 Q. Ask him where these old people lived?

A. Old people from Wish-ham.

Q. Ask him if they lived at Wish-ham at that time?

A. They lived at Wish-ham and they fixed up this boat here so they could cross over.

Q. Ask him how long it is since the Indians quit fishing there so much like they used to?

A. It has been about 15 or 20 years now since the people has kind of slacked up in fishing there, although they been fishing right along but not as many as there used to be.

Q. Ask him if the Indians have talked among themselves a good deal over there about Mr. Seufert and about these fishing places like Kum-sucks?

A. Well, people has never talked very much about it, only at times somebody will come out there and say, well, we can't fish like we used to, because Seufert won't allow us to fish like we used to.

Q. Ask him how he explains, then, why he says they have been fishing there all the time?

A. If I understand your question right, that Seufert is a man that don't want the people to come there and fish like they used to fish.

Q. Ask him how far it was from his home down to this place. Ask him how far it was from where he lived when he lived on the river, down to this place, Kum-sucks?

A. Which home do you now have reference to, the Wish-ham or to Yakima?

Q. His home when he lived down there on the river, I said?

A. I could not tell you just how far it is from my home at Wish-ham to this place Kum-sucks, because the river twists around there every way, getting down to that place.

554 Q. Ask him when he went down on the land if he went along the river, or across the hill?

A. There is a trail leading from Wish-ham right down to this place and over the hill.

Q. Ask him if that trail runs right along the river, or back across the hills?

A. It runs along pretty close to the river.

Redirect examination:

Q. He didn't answer Judge Bennett's question. He stated they did not fish there as numerously or as many now as they used to; yet some fished there. Ask him to explain that.

A. When I stated there before, I said there were just a few people fish there, not very many. There is people live from Wah-sucks on up to Tenino that all fished there.

Q. He has testified that some few fish there. Now he has testified that the others many of them do not. Ask him why the few fish there and the many do not.

A. There is some of those Indians that was employed by Seufert. They could fish there, and the others could not fish there.

Q. He testified that there were two canoes also above the upper Memaloose Island. Whom did those canoes belong to?

Court: I do not think that would be material here.

Mr. Rankin: Very well, your Honor. I wanted to show a policy among them, that this was not unusual or inconsistent.

Court: Well, they belonged, I suppose, to the Chief, the same as these others.

Mr. Rankin: All right. That is all.

Excused.

555 BILL CHARLEY, a witness called on behalf of the Government, being first duly sworn, testified as follows through Interpreter.

Direct examination.

Questions by Mr. Rankin:

— What is your Indian name?

A. My name is Kee-ulch.

Q. Where are you allotted?

A. My land is right where I was raised, right along the Columbia River.

Q. What tribe do you belong to?

A. I am Wish-ham tribe.

Q. Are you allotted on the Yakima reservation, or not?

A. I have no allotment on the Yakima reservation.

Q. How old is he, if he knows?

A. I think I am about 70 years old.

Q. Where were you born?

A. I was born right at Wish-ham, place called Wish-ham.

Q. Did you ever know the Chief called Colwash?

A. Yes, sir. I know Colwash. He was my uncle.

Q. Was he, or was he not, a big man among the Indians?

A. Yes, sir; he was a leading man among the Indians.

Q. All the tribes, or just an individual tribe on the north side?

A. Colwash was called a Chief along that Columbia River there for quite a ways.

Q. Among the old Indians, that is the old time, what did The Dalles fishery include?

A. That place across the river is called Wish-ham, and on this side of the river is place called Wasco.

Q. Well, that is not my question. Does he know the point
556 Wah-sucks?

A. Yes, sir. I know where Wah-sucks is.

Q. Does he know where Celilo Falls are?

A. I know where Celilo Falls is.

Q. Now, from Wah-sucks to Celilo, did that have one name or not?

A. Celilo and Wah-sucks is two different places, but it was all fishery along there.

Q. What were the relations between the Indians on the south and the north side of the Columbia River?

A. They were getting along nicely, have no trouble.

Q. Did they ever cross back and forth one tribe to the opposite side?

A. Yes, sir. I have seen both tribes cross backwards and forth.

Q. How did they cross?

A. With the canoe, also called the dug-out.

Q. Who owned the canoe?

A. A man by the name Seelatsee.

Q. Anybody else?

A. My uncle, by name of Colwash, was another man that built those canoes.

Q. What became of some of the canoes that Colwash built?

A. One of those canoes I have it at my house now. My uncle, about the last thing he told me, to take good care of that canoe, that is only thing you will have to remember me by. And I took it and I have got it now.

Q. Does he use it, or has he got it up at his house?

A. I never use that canoe any more. I have got it up to my house.

557 Q. Where did they cross the Columbia, the Indians from the north side?

A. There is one crossing at Wah-sucks.

Q. Just tell him to tell the Court how the Indians crossed and where they crossed, and name the places.

A. Another crossing above that is called Til-mich-tich; another one further up called Na-kuch-nuch.

Interpreter: That is that Choke Cherry crossing.

A. There is another crossing up above the narrows on the Washington side, is called Wa-wa-nosh; on the Oregon side is called Tenino. That is the landings.

Q. Did they always have canoes there, or did they bring canoes at those places?

A. They were there all the time for people to use.

Q. What did they do with them? Were they there during high water?

A. During the right high water they take them ashore.

Q. What became of all those canoes?

A. Oh, they all got old and went to pieces.

Q. Where did Seelatsee have his canoes?

A. Seelatsee's canoes were used right along at those crossings.

Q. Does he remember any particular crossing where Seelatsee used his canoes?

A. There was some of them used, as I said, up above at Wa-wa-nosh crossing. That is the further crossing up the river.

Q. Does he know where the upper Memaloose Island is?

A. Yes, I know where that Memaloose Island is. It is just above Wa-wa-nosh.

Q. Where, with respect to that island, did Seelatsee have his canoes?

558 A. It is below the Memaloose Island.

Q. Where did the Indians on the north side go for early fishing?

A. I am here to tell the truth, and nothing but the truth. And in early part of the fishing, when the river is rising, the people from the Washington side comes over to fish; some calls it Wah-sucks; and some calls it Kum-sucks.

Q. Did they come in numbers or not?

A. There is quite a few of them comes there early in the spring, because they are glad that Spring opens up, that they know they was going to get something to eat there.

Q. How long did they stay there?

A. Sometimes they stay there quite a while, and other times not so long. It depends on the freshet.

Q. How does he mean, that it depends on the freshet?

A. If the freshet does not come up very fast we can fish there quite a while, but if it comes up fast, why, we have to get out of there.

Q. When was the last time he was down at Wah-sucks?

A. The last time I remember being there is about five years now.

Q. How long ago does he remember Wah-sucks at first?

A. Ever since I can remember.

Q. How did they fish there at first?

A. The first time I caught fish there—of course, you all know what a dip net is and how it is made and everything—that is what I caught fish with.

Q. Did he fish there himself?

A. Yes, sir.

Q. Now, when he was there the last time, how did they fish?

A. The last time I was there, I saw people fish with a net.

559 Q. Last time?

A. Last time.

Q. When was that?

A. Oh, four or five years.

Q. Who was it fished with a net?

A. A man by the name of Sam Williams.

Q. Where did he have his net?

A. It was along there where it is called Kum-sucks, that is where I saw that net.

Q. Ask him if he knows when they blasted off the point, the Government.

A. I know where that place is.

Q. Does he know what time they took it off?

Interpreter: Time?

Q. Does he remember about the years they took it off?

A. I could not say just about when; perhaps five or six years.

Q. Did Sam Williams have his net there before or after they blasted it off?

A. That was blasted afterwards.

Q. Do as many Indians fish now as used to fish there?

A. There are not as many now as there used to be.

Q. Why?

A. Seufert won't allow them to fish there like they used to.

Q. Tell the Court what Seufert has done which prohibits them from fishing there as often as they used to.

A. I know this much, that Seufert has went down there and cut Sam Williams' wheel away from there.

Q. Did he see that?

A. I saw it.

Q. Did he see them cut the wheel away, right at the time?

A. I saw it myself.

Q. What else has been done?

A. There is a fence there.

Q. Whereabouts?

560 A. Over next to the wagon-road, where this fence is.

Q. Is that the railroad fence?

A. I could not say whether it is the railroad fence, or what fence it is.

Q. What else has been done?

A. That is all I know.

Q. Did Mr. Seufert ever talk with him personally about fishing?

A. Over on the Washington side, Seufert has driven me out of two of my fishing places.

Q. Where were those two places?

A. It is right across the river from Wah-sucks, over on the Washington side; one a little further up above.

Q. What are those places called, if they have names?

A. The first place is Cow-wa-shela, Indian name. The upper one is Chul-at-Kleet.

Q. Ask him if he knows where the Winans land is.

A. Yes, sir. I know where it is.

Q. Up or down the river from the Winans place?

A. It is below the Winans place.

Q. Did he talk with Mr. Seufert personally?

A. Yes, sir; Seufert and I talked personally.

Q. What was said?

A. He told me I had no more business there at all at that place.

Q. What did Charley do then?

A. What else could I do? I had to quit.

Q. Was there any other time or place where Mr. Seufert spoke to him about fishing?

A. I have another place just below what you people here call the Winans place now. That is where I been running my wheel.

Seufert comes along and cuts a channel in between my wheel
561 and the main shore. Now I have no way of getting out there.

Q. Has Mr. Seufert done anything else to interfere with his fishing?

A. That is about all the damage he has done to me; took my two places away from me; then cut this channel so that I could not get out to my wheel.

Q. Has he ever talked this over with the Indians?

A. Yes, the people knows of this.

Q. How much has he talked it over with them?

A. We have not talked so much about it; right here, I am telling it here in the court today.

Q. Has he made complaint about it to whites?

Mr. Bennett: I don't think that is material, your Honor.

Court: I don't think that is material myself.

Recess until 2 P. M.

PORTLAND, OREGON, January 27, 1916—2 p. m.

BILL CHARLEY resumes the stand.

Direct examination continued:

Q. Charley, did you lose some children in the river, drowned?

A. Yes, sir.

Q. Where was that?

A. Up at the Na-Kuch-Nuch crossing.

Q. Just tell the Court briefly about it.

A. They were crossing the river there with a very small boat.

Cross-examination.

Questions by Mr. Bennett:

Ask him where that was with reference to Seufert's cannery, above or below.

- A. A little above the cannery.
- 562 Q. Between there and the Big Eddy?
- A. It is between the cannery and the Big Eddy.
- Q. Ask him if there were any men in the boat.
- A. There was no men in the boat, but there was a young fellow in the boat.
- Q. About how old?
- A. Might have been ten or twelve years old.
- Q. Ask him if he was rowing the boat?
- A. That is the one was rowing the boat.
- Q. Ask him where he started from, where they started from that day; whereabouts on the river they got in the boat?
- A. They started right from that Na-kuch-nuch crossing.
- Q. Is that in the Big Eddy?
- A. Big Eddy is above there.
- Q. Ask him where they were going to land? Ask him if they were going to land at the mouth of the canal?
- Interpreter: Mouth of the canal, you say?
- Q. Mouth of the Government canal. Doesn't he know where the mouth of the Government canal is?
- A. Mouth of the canal is up above where they intended to land, at Na-kuch-nuch.
- Q. Ask him how long ago that has been?
- A. I could not say just how long.
- Q. About how many years, as near as you can tell?
- A. It has been quite a while ago; perhaps 15 or 16 years I should judge.
- Q. Ask him if he remembers the treaty with Governor Stevens?
- A. I was present.
- Q. He says he was present?
- A. Yes, sir.
- Q. Ask him where that treaty was made?
- 563 A. On the Wasco side.
- Q. How far from the Columbia River?
- A. Just a little way from the river.
- Q. Half a mile from the river, ask him.
- A. It might have been half a mile, and it might have been a mile.
- Q. Ask him if it was down there on that flat, close by Wah-sucks?
- A. It is back of this Wah-sucks.
- Court: You mean there is where the treaty was signed?
- Mr. Bennett: I do not think so, your Honor.
- Q. Ask him if that was the treaty with the Yakima Indians.
- A. I could not say for certain whether it was for the Yakimas or for the Wascos, but they were all there.
- Q. Ask him if Governor Stevens was there.
- A. I saw him with my own eyes there, talking to the people.
- Q. What say?
- A. I saw Governor Stevens there with my own eyes, talking to the people.

Q. Ask him if Kami-aken was there, Chief Kami-aken was there.

A. I never saw Kami-aken there, just the Wascos and the Wish-hams, as I stated before.

Q. Ask him how far his land is from the Columbia River.

A. It is just a little ways from the river.

Q. Ask him if he lives about two miles from the river.

A. I am not that far away, two miles from the river.

Q. Ask him if his land comes down to the river at any place.

A. It does not quite reach the river.

Q. Ask him if the fishing place where he claims to fish, where he claims Mr. Seufert cut a channel back of him and shut him off,—ask him if that is on Mr. Seufert's land.

Interpreter: I will have to explain that to him some more.

564 Q. All right, never mind; let it go. Ask him how he gets across to his wheel since Mr. Seufert cut that channel in there.

A. Since that channel has been cut in there I put a skiff down below this channel to cross in the skiff over to where my wheel is.

Q. Ask him if Mr. Seufert has not put in cement by the side of his wheel, clear across that channel.

Mr. Rankin: Whose wheel, Judge, Mr. Seufert's?

Mr. Bennett: Aside of Mr. Seufert's wheel, yes, clear across that channel.

A. There is a walk there, but it does not come anywheres near my wheel.

Q. Ask him if he does not sometimes, when he is going to his wheel, go across that walk.

A. No, sir.

Q. Ask him if that walk extends clear across the channel that Mr. Seufert cut.

Interpreter: Across the channel?

Q. Yes. Clear across the channel that Mr. Seufert blasted out in the rocks.

Interpreter: You want to know whether the walk extended across that, do you?

Q. Yes, whether it does not extend clear across it from one side to the other.

A. I don't know of any walk being there, but it is cemented right across to this other side, right there where the wheel is.

Q. Ask him how far that is from his wheel.

A. It is not very far away from my wheel.

Q. Ask him if that walk is open so that anybody can walk right across.

565 A. It is a very bad place there to cross.

Q. Well, he does not answer my question. Ask him if it is open so anybody can cross it if they want to.

A. Well, there may be some people that can cross there; it is open.

Q. Ask him if he didn't have to have a board across there before Mr. Seufert did any blasting to get across.

A. Yes. There was no board there. We crossed there without a board. Then he went to work and blasted that place out.

Q. Now ask him if his wheel is a scow wheel.

A. Yes, mine is a scow wheel.

Q. Ask him if it is not away up in the narrows, where he has to wait for very low water in the Fall before he can get it up there.

A. That is where my wheel—I always run it down to this point.

Court: Is that one of the ancient fishing places of the Indians?

Mr. Bennett: I do not understand it so, your Honor, but of course there might be a difference of opinion about that.

Court: I did not know how he got a foothold there in the first place.

Mr. Bennett: I think I can probably explain that better farther on with other witnesses than I can with him.

Court: Very well.

Q. Ask him if he claims to have ever dipped with a dip net at the place where his wheel is.

A. That is a dip stand there.

Q. Ask him if that was his dip stand, or if it belonged to some other Indian.

A. My old parents has dip stand there. When I got to be 566 a man I got to dipping there.

Q. Ask him if anybody can dip there now that he has got his wheel there.

A. Yes; people can dip there.

Q. Ask him if anybody does dip there now.

A. Yes, sir.

Q. Ask him who dips there now.

A. I have dipped there myself.

Q. Ask him who else dips there. Ask him if there is anybody else dips there.

A. My son Olie has dipped there.

Court: Ask him if any other Indians have dipped there besides his family.

A. A man by the name of Kosh-la-mach.

Q. When did that man dip there last?

Interpreter: This Kosh-la-mach?

Q. Yes.

A. Perhaps about five years.

Q. Ask him how long he has had his wheel there; how long his wheel has been there.

A. It is quite a good number of years.

Q. More than five years or less than five years?

A. It has been more than five years.

Q. Now ask him if he didn't have a dipping place up near Wish-ham.

A. Yes, there is other dipping places above there along Wish-ham.

Q. Well, ask him if he had a place that he claimed up there by Wish-ham.

A. There is one big dip stand along about half-way along those narrows there. That dip stand belonged to all of the Indians.

567 But now there is no one dips there—place we call Ow-we-Pash.

Q. Tell him he has not answered my question. Ask him whether there was a dip stand up there that he claimed.

A. Well, I don't know that I could answer that any other way only answer you in this way, that there was my older people had that dipping place and that is why I thought it was mine as well as anybody else's.

Q. Now ask him if at the time that this treaty that he has talked about was made, if he lived at Wish-ham then.

A. I was living at Wish-ham.

Q. Ask him if the Wish-ham tribe then was not a very little tribe?

A. Wish-ham was a very large tribe at that time.

Q. Ask him if it is not true that there was only about 139 or 140 of the Wish-hams at that time, counting men, women and children.

A. There was a great deal more than 129 or 130 people at that time, children and all.

Q. Ask him if they had not had small-pox in his tribe a few years before, and killed them all off, but just a few.

A. It is true that the Wish-ham tribe had the small-pox, but there was more of them left than what there was died.

Q. Ask him if he remembers the time when they had the small-pox.

A. I remember.

Q. Ask him if he claims to have fished at Three Mile Rapids five years ago.

Interpreter: Five Mile Rapid, did you say, or Three Mile?

Q. Three Mile Rapids, what he calls Wah-sucks.

568 A. Yes, sir, I have fished there.

Q. How does he claim to have fished there at that time, five years ago.

A. With a dip net.

Q. Ask him where he claims to have landed at that time.

A. I landed just below Wah-sucks.

Q. Ask him if the water was still and safe down there where he landed, just below Wah-sucks.

A. Yes, the water was all right where I landed.

Q. Ask him if there was any fence between where he landed and the fishing point.

A. I did not see any fence from where I landed to this fishing point.

Q. Ask him where he claims to have been when he says that he saw Sam Williams' wheel turned loose, on which side of the river he was.

A. On the side that the wheel was casted loose from.

Q. On the Oregon side?

A. On the Oregon side.

Q. Ask him if he was right there on the point.

A. Yes, sir.

Q. Ask him how long ago that was, how many years.

A. About two years, I should think.

Q. Ask him how long ago since the Indians quit fishing there so much as they had before.

A. I should think about five years since they have quit.

Q. Ask him if they fished just as much up to five years ago as they had in the years before, long time ago.

A. Yes, they fished quite a little there up until about five years now.

Q. Well, ask him if they fished just as much as they did long time ago, up to five years ago.

A. There was not as many as there was before.

569 Q. Well, when was it that the big lot of them quit fishing there? When there was not so many.

Interpreter: He didn't seem to get that very good.

Q. Well, explain it to him then; ask him.

A. I am very hard hearing and it takes quite a while before I can understand anything. It has been about twenty years since I saw a lot of people fish there.

Q. Now, he said in his direct examination something about Mr. Seufert driving him out of a place to fish across from Kum-sucks. Ask him what kind of fishing he was doing there.

A. He had a scow wheel there.

Q. Ask him if he had one scow wheel there, or two.

A. I had two wheels there, but they were located in two different places.

Q. Ask him if they were on Mr. Rorick's land.

A. Those wheels that I had was not on the land; they were out in the water.

Q. Were they tied up to the land?

A. Yes, they were tied along those rocks there.

Q. Ask him if that was in front of Mr. Rorick's land.

A. Rorick might have had some land back behind there, but my wheels were down here to the river.

Q. Mr. Seufert did not have any land over there, did he?

A. I don't know of Seufert ever owning any land there. If he did, I don't know anything about it.

Redirect examination:

Q. Do you know when the Government blasted off the point at Wah-sucks?

A. Yes, I remember.

Q. Did he fish there with dip net before or after the Government did that?

570 A. I have dipped there before that was blasted.

Q. Why didn't he use the walk that Mr. Seufert put up at his wheel across this channel?

A. Do you mean the place that he has his wheel up above?

Q. Yes. Have him understand I want to know why he does not use that cement walk across that channel.

A. There is not any cement walk across there. There is a fish wheel standing there.

Q. Ask him awhile ago if he didn't say something about a cement walk, or cement path, or whatever he calls it, that you walk on from one side across the channel over to the rock where his wheel is.

A. The reason that I do not cross there, because I am afraid to cross there, it is such a high cut there.

Q. Ask him if they have any trouble about that now in white men's court.

Interpreter: About this cut?

Q. No. He has testified one time about a walk across there. Ask him if they have any trouble about getting to his wheel in the white men's court.

A. There has been no trouble before about this cut or anything. There was not anything said about it until right now you hear me talking about it.

Court: Ask him if he knows General Palmer.

A. Yes, sir, I know him.

Q. Well, now, was he the man that was present at the time they made the treaty that he spoke of before in answer to Judge Bennett's question?

A. I saw him present.

Q. Palmer was there at the time?

A. Yes, sir.

Recross-examination:

Q. Ask him if Stevens was there too.

A. Yes, sir.

Excused.

571 L. A. WHITCOMB, a witness called on behalf of the Government, being first duly sworn, testified as follows.

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Mr. Whitcomb?

A. I live here in Portland.

Q. What is your business?

A. I am working for a heating and ventilating concern.

Q. Where were you born?

A. Born in Oregon.

Q. Counsel wants to know where you said you were born.

A. In Oregon.

Q. How long ago was that, Mr. Whitcomb?

A. Well, it was in 1860, August 8th.

Q. When did you go to The Dalles?

A. In 1879.

Q. Where did you live when you went to The Dalles?

A. I came from Michigan at that time.

Q. Where did you live when you went to The Dalles?

A. I lived at what was known at that time as The Dalles Fishery.

Q. Where was that?

A. About five miles above The Dalles.

Q. Who owned the place?

A. Well, at that time it was owned by the heirs of the Evans estate.

Q. Who was Mr. Evans?

A. He was my uncle.

Q. What was his name?

A. Isaac M. Evans.

Court: What year was that?

A. It was in 1879.

Q. Did any white men ever own the Evans place prior to your uncle's ownership of it?

A. My knowledge was that he bought it from the State.

572 Q. Here is a map of the Columbia River from the survey of 1879 and 1880, called Government's Exhibit No. 6. Are you acquainted with this map?

A. Yes, I recognize it.

Q. Will you point out on that map about where the old Evans place or fishery was?

A. Well, the lower line of the old Evans place came right along this point somewhere.

Court: About where the mouth of the canal is now.

A. Well, I don't know. I have never been there since the canal was put in. I have never even seen a map of the canal, so I don't know anything about that. But the line came about here, the lower line; and then I forget just how far, but it went pretty close to what was termed then—we called it the upper bridge, that is just a name we had for it, to designate the different places on the place, don't you see. This we called, down here by it, we called the half bridge. That was a bridge that was built half-way on the rocks and half way with bents, and we called this the half bridge; and another point up here we called the center bridge, and this was the upper bridge.

Q. And where was the Evans house where you lived?

A. The Evans house would be right in about this location somewhere.

Q. Will you mark it, Mr. Whitcomb?

A. I could not mark it exactly.

Q. Just approximately, as you remember the territory. Mark it "Evans." (Witness does so.)

A. That is as near as I can locate it. It might be a little different.

573 Q. How long did you live there?

A. Well, I went there in 1879, and I think it was in the Spring of 1885, I think it was, that I left there. I am not sure about that.

Q. What was your business there?

A. Well, we raised a garden and sold that, and we fished for the market, and we also salted salmon there.

Q. How important was your fishing industry, as related to the local.

A. Well, that was our main business, the fishing.

Q. Were there other fishing businesses of your size there?

A. Well, no, not at that time. Later on there was some started up.

Q. Did you ever have any trouble with the Indians there about the fishing?

A. I did at one point.

Q. Where was that?

A. That was what was known as the mess house.

Q. Tell about that circumstance to the Court.

Court: Where was the mess house?

A. The mess house was located at what we termed the head of The Dalles, the head of the rapids. You see there is a rapids where it runs down there. It is almost a straight shot; and this is right at the head of the rapids.

Q. Whereabouts with respect to the Evans place, above or below?

A. Above the Evans place.

Q. With what Indians did you have the trouble?

A. They were Yakima Indians.

Q. Were they on the Oregon side?

574 A. They were on the Oregon side.

Q. What was the occasion of the dispute?

A. It was early in the Spring, and I was up there fishing for the market. We used to catch fish as early as we could, because we could get pretty good prices for them. I was up there alone, and they came down and told me they were going to throw me in the river. They didn't have on any more clothes than they needed, and was dressed, fixed up in what we might call a breech-clout. We owned that point of land there; and I told them, all right, if they wanted to throw me in the river to come on.

Q. Did you see them cross the river, or do you know where they came from?

A. I know where those Indians came from, but I didn't see them cross the river.

Q. Were you acquainted with Indians on the North side of the river?

A. Yes, sir.

Court: Now tell why they were going to throw you in the river.

A. Well, this was up at this place.

Mr. Rankin: I thought he had explained that.

A. No, I guess I didn't go through with it. They came down there and told me that this fishing place where I was fishing was their property. One Indian in particular said that his father owned it, and also his father's father; it had been handed down from generation to generation, and that the white men had no right there. And inasmuch as we owned the property and had a deed to it, I thought

575 we did. But the Indians started to come for me. I was in a long kind of ledge, like that. It was a long, narrow place.

I had a club like that, and I tapped him on the head. He didn't bother me any more.

Q. Were you acquainted with the Indians on the south side.

A. Yes, I was acquainted with a great many of them.

Q. What could you say of the relation of those Indians on the south side with those on the North side?

A. They were always friendly.

Q. How do you know that, Mr. Whitcomb?

A. Well, I have seen them come from the north side of the river and go into the camps and sat down and eat with those Indians on the south side of the river.

Q. How about the south side going over?

A. Well, I was not over there much.

Q. Did you ever hear of any trouble or dispute among those tribes?

A. I never did while I was there.

Q. Did you ever see any Yakimas fishing on the south side of the river?

A. I have seen them fishing, yes.

Q. Whereabouts?

A. At this point where I had the trouble, and I have seen them fish right there at what we termed the old fishery.

Q. That is the old Evans fishery?

A. Yes.

Q. I don't know as I know just where that was now. Here is the Evans house, that you have marked in there. I will just put a square around the word "Evans." Where was the Evans fishery from that?

A. Well, that would be along in here somewhere. This is the railroad track in there, isn't it?

576 Q. Yes, I think this is the railroad track. These lines represent the bank of the river, these white lines here.

A. I think it was right in here.

Q. Here is the bank of the river.

A. Well, but the fishery was not on the bank of the real river. It was close to the railroad. There was this slough that comes down in here.

Q. The Evans fishery was about where?

A. Right in here somewhere.

Q. I will put "E. F."

A. I think that is as close as I can locate it on the map. It might

not be within quite a distance of it, but that is as close as I can locate it on the map.

Q. You have seen them fish there?

A. Yes.

Q. You were speaking about the Indians crossing over. Did you ever see any of the Yakimas cross from the north side?

A. Oh, yes.

Q. Tell the Court what you have observed with regard to that.

A. Well, we used to fish in the early spring, before the salmon ran, for sturgeon, and we fished over in the Big Eddy, and also along different points on the river. We went over there always in a row boat. And those Indians that was on the north side of the river had their camp up above the Big Eddy, and they crossed down, started from the Big Eddy and came down the river.

Q. You spoke of going across to Big Eddy. Will you kindly state where you would leave and where you would go to.

A. Well, at a very low stage of the water we would start from this point here.

577 Q. Mark it "Start". (Witness does so.)

A. We would start from this point here, and we would follow up along this land.

Q. That is the east shore, I take it.

A. Well, no. That would be—well, it would be rather the east shore from where the river is there. And follow right along up this bank and cross up to this island and come over here and on up to this point over on Memaloose Island. I see it is marked here as "Grave Island." We always called it Memaloose Island.

Q. That would be what point, for the benefit of the record.

A. Just about this point here. It is marked "20" here.

Q. Just put an "X" there, with a ring around it, please. (Witness does so.)

Q. From there where would your boat go?

A. From there, as the water seemed to be right—the water raises and lowers—this current comes out around here and meets this one at this point; and that acts like kind of tide, going up and down. When that was what we called full, then we could shoot across in here. When we got across this current, then we could drift around in there for days, if the wind didn't blow us out—a log would, or a boat would.

Q. Could you land at any point in the Big Eddy you then desired?

A. Yes, all along here. There was some bluffs along here different places, but it was possible to land a boat anywhere in the Big Eddy almost.

Q. Were there places where there were no bluffs?

A. Well, there was places where you could get down easier
578 than you could at others.

Q. Have you seen Indians coming out of Big Eddy in the manner in which you have described you have gone in?

A. Yes, sir.

Q. From what side were they coming?

A. Well, I have seen them coming from both sides.

Q. How many times have you made that trip yourself, Mr. Whitcomb?

A. Oh, I suppose it would be—I could not come anywhere near telling. For three or four years we fished there for sturgeon, we went over twice a day, sometimes more than that, in the early part of the spring and the late fall, after the salmon quit running.

Q. You spoke of the Indians camping on that side, I believe. Will you tell the court where they camped?

A. Well, usually their camps was along from here up, up to the Big Eddy rapids.

Q. Were they on the river?

A. Some of them. Well, no; that is rather—there is quite a bluff along there in different places; and then there is a low place, that is a bench runs back, and then there is another bluff. They used to camp on that bench.

Q. On the bench?

A. Yes.

Q. Where was that? Just explain.

A. That ran along through here.

Q. Shall I just write "Bench"? Is that agreeable?

Mr. Bennett: Sure, if you wish.

A. Of course, this might be lower down. It is not far back from the river.

Q. About how far back from the river would that come, 579 Mr. Whitcomb?

A. Well, that has been a long time ago, and I could not hardly answer that, and answer so it would be real intelligent.

Q. I don't mean in yardage; just generally. Was it quite a ways or just a little ways?

A. Well, that was quite a little piece.

Q. They crossed in canoes. Where did they get their canoes?

A. Some of them had the old log dug-outs, and some of them had boats.

Q. Have you seen them crossing many times, or infrequently?

A. Oh, a good many times; I have seen them coming up and down the river there, and seen them cross.

Q. What do you call this place where we have marked "Start" with reference to Tenino. I don't know where Tenino is. Do you know where it is?

A. Well, now, Tenino—a great many places might be called Tenino.

Q. Did you have any particular name for this place you have marked "Start", or did the Indians have any name?

A. Not that I know of. We called it the lower landing, where we landed our boats. Now, another place where we used to, I omitted that. When the water was quite low, we used to land our boat in here and go out through this channel.

Q. What stage of the water would you go through this channel?

A. Between Memaloose Island and this one; Memaloose Island and the island southwest of it; that would be pretty low water. That

580 would be quite cut off. We wouldn't have to row all this distance if we could go across there. We couldn't go through that channel in very high water.

Q. Why?

A. It was too swift.

Q. Low water you have gone through this way?

A. Yes.

Q. Where would you come in?

A. The same place, and cross into the Big Eddy, as the other place; follow right around to Memaloose Island, and up to this point, you see.

Q. That is on the southwest side of Memaloose Island?

A. Yes.

Q. Grave Island on the map?

A. Yes.

Q. Now, have you ever seen the Yakimas coming out at Big Eddy, passing your lower landing, as you call it, at the place marked "Start," and going on down the river?

A. Yes. There is one particular time that I call to my mind.

Q. When was that?

A. That was in about 1881, the spring of 1881.

Q. Just tell the court about that, please.

A. It was about the time when—I could not tell you the month—it was about the time when the salmon had just begun to run. And the water in Five Mile Creek was high, so we could not—we had a bridge on Five Mile and we could not cross it. And my step-brother, who is dead now, he and I had some sturgeon and we took them to The Dalles in a boat to bring back some supplies. And when we went down there to this place that I have got marked, the lower landing as the "Start", as you call it, there was some Indians came out of the Big Eddy in a row boat, and they had dip
581 nets with them. They came down there and asked us where we were going, and we told them we were going to The Dalles.

We had some other conversation with them. We didn't ask them, as I remember—I might have asked them all these questions, but that has been 27 or 28 years ago, maybe 30 years ago. It was in 1881; a man could not remember a conversation that long. I know they did ask us where we were going. We went along down the river; sometimes they were ahead of us.

Q. You passed on down?

A. On down towards The Dalles. When we came down to this point, along about in here, they crossed over in here on this side.

Q. How are you going to designate this point here?

A. Well, it is below the Covington place where they crossed.

Q. Is this the Covington point, or this?

A. I think along in here is where Covingtons lived. I think that is the place. I think this point is below. We never had any names that I remember for this point. But the Covington's place, I think this is the Covington's place right in here.

Q. How far is Covington's place from Seufert's cannery?

A. Just a short distance.

Q. Do you know where Mr. Seufert's cannery is?

A. Yes.

Court: That has already been designated as the Covington place.

A. This one here.

Q. All right. How far below that was where the Indians left off?

A. Right in here. After we got to Covington's place we
582 crossed the river here, don't you see, swung across. There is an eddy here. After we came down here we swung across to follow this bank. They swung down in here and landed down in here some place. We saw them land and get out there. We went on down and cross through the rapids here.

Q. That is, they landed on that point running out there, which we have designated "Location 6." It is marked on there "Location 6." They landed on this point?

A. Somewhere between this point and here. I could not say right exactly where they landed.

Q. That is between the extreme north end of that point and the shore line pretty well?

A. My judgment, from the nature of the water, as I remember it, there is that they would have to land about the center there. About in this position here.

Q. Mark it "Y", with a ring around it.

A. That is only as I remember it. That has been so long ago I could not tell exactly.

Q. That is approximately correct?

A. Yes, as I remember it.

Q. Did you say they had anything with them?

A. They had their dip nets and some other things.

Q. What did you do then?

A. We went on and paid no more attention to them.

Q. Where did you go?

A. We went to The Dalles.

Q. Did you go in a boat?

A. Yes, sir.

Q. Did you go through Three Mile Rapids in a boat?

A. Yes, we went down and went through some little channels that were there.

Q. Did you make that trip more than once?

583 A. We made it a great many times.

Q. Up as well as down?

A. Up as well as down.

Q. Explain to the court just how you navigated when you went from your home place to The Dalles, through Three Mile rapids.

A. We could go on either side of the river—either on this side, this was the hardest side, to get around this point; when we came around here we used most always have to tow our boat around the rocks.

Court: That is on the south side?

A. That is on the south side. There was stages of the water we

could get through without that, at certain stages, very low stages. I don't remember—I know we went down on that side of the river, but I don't remember whether we towed our boat coming back, or not. That has been too long ago.

Court: How many Indians were there in that?

A. Three or four of them, I could not say.

Court: Do you know what Indians they were?

A. No. One of them was a Yakima Indian.

Court: You don't know what the others were?

A. No.

Q. How do you remember that one of them was a Yakima Indian?

A. Well, I knew him pretty well, and I have seen his passport.

Q. What was his name, if you remember?

A. Well, I could not come very close to it. It was an Indian name.

Q. What did it sound like, Mr. Whitcomb, please?

A. It is a pretty hard proposition to tell. It was a kind of hard word to pronounce anyway. It was an Indian name. Wah-menashet, as near as I could get it, and it might have been far from that. That is the pronunciation I got from him.

584 Q. Have you ever heard the name Wah-suck?

A. Yes. It is a word that is familiar to me.

Q. Do you know where it was?

A. Well, I know that it was down the river from us.

Q. Did you ever hear—did you pioneers there ever have the term "Lone Tree?"

A. I never heard that, that I remember of.

Q. Did you ever see the Indians fishing at this point which is designated here as "Location 6"?

A. Yes, I have seen Indians fishing there?

Q. Many times or few times?

A. Oh, quite a number of times.

Q. How did they fish?

A. I have seen them fishing with dip nets.

Q. Where did they come from?

A. I could not say as to where those Indians came from.

Q. You saw this one band of Yakimas land there, that you recollect?

A. Yes, but I don't know whether they fished or not, because we went right on.

Q. You saw them land with their dip nets?

A. Yes.

Q. Have you ever seen any fish platforms there, the drying platforms?

A. Yes, I seen over close to where Jake Thomas lived, right in that vicinity, I seen places there where they dried fish.

Q. How far was Jake Thomas' place from the point?

A. That was quite a little ways back in there.

585 Q. By the way, Mr. Whitcomb, what did you call this point?

A. We called it Three Mile Rapids.

Q. Three Mile Rapids?

A. Yes, sir.

Q. Where were the rapids proper, as you understand it?

A. The rapids, as we understand them, was right through this shoot here, from this point here.

Q. That is from the northeast point of Location 6 down the river. About how far, did those rapids extend?

A. Down about here. I have pretty good reason to know something about them.

Q. I will mark a line across right at the edge of your finger there.

A. Somewhere about like that. I went through there once when I didn't want to.

Q. Just explain that.

A. Another young fellow and I were going to The Dalles in a boat, and he was rowing; and before I knew it we had got too far to get over to the shore. The water was so swift; we could not get over to the shore. I seen we had to go through this place; I got hold of the oars, and we went through.

Q. Who was that young man that was with you?

A. His name was Bennett.

Q. Bennett?

A. Not any relation to the Judge.

Q. That was not the Judge. But what was your usual method? Did you usually go right down over the rapids?

A. No. That is the only time I ever went right over the rapids.

Q. Now, from what you call—I suppose you call this the head of Three Mile when it is up here, do you not, at the point?

586 A. Yes.

Q. From the head of Three Mile back to where that Indian lived that you understand, Thomas, how far was that, just approximately?

A. As near as I can remember, where Jake's place was it would be over in here some place.

Q. You said there were fishing stands there. Was there any other indication of fishing?

A. Not fishing stands.

Q. Not fishing stands, but racks?

A. Places where they dried fish, and where they had what you might call a kind of cache.

Q. What did they do with those fish after they brought them over there?

A. They dried them. And when they went away from there to the Reservation they always took the most of them with them.

Q. Did they have any other disposition of the fish?

A. I have known them to go and dig up out of these caches in the winter-time, some of these that lived there all winter.

Q. Explain these caches to the Court, please.

A. They had places in the rocks where they covered them up. I never dug into one; but I have seen them take dry fish out of them.

Q. Do you know what became of Jake Thomas' place?

A. No, I don't.

Q. What was the character of the boats that these Indians operated in the times that we speak of?

A. Well, as I said before, they had both row boats and log
587 canoes.

Q. You spoke of one crossing here. Do you know of any other crossing from the Washington side to the Oregon side?

A. Yes, I have seen them swim their horses across the river there.

Q. Whereabouts is that, Mr. Whitcomb?

A. They started in from this point, just below this island. This was an island. It don't seem to show an island there. But I never seen the water—I never seen that when it was not an island. Of course there may be some changes in there since I was there in the way of blasting the rocks there. I don't know nothing about that.

Q. Did this island have any name?

A. No, not that ever I knew of. They started in from right about here. They landed their horses over there somewhere. I don't know just where they did land.

Q. Give us approximately the place on the map, so we can designate it.

A. As I remember, it was somewhere between the mouth of Five Mile and up to about this place here. I am not sure about that. They might have landed, though, at Five Mile. I never seen the landing, but I have seen them start the horses in.

Q. Did they have ever a name for that landing?

A. Not that I know of.

Mr. Rankin: I will just mark it "landing."

A. I don't know just where that landing was, I could not say.

Q. Is that the general place?

A. That is the general place. I know they started in
588 from there, because I have been on this bank of the river; seen them drive their horses in, take them across.

Q. There was a landing below what you have marked "Start" on the map?

A. Yes.

Q. That left the Washington side below what you remember as an island?

A. Right about in there where your pencil is, somewhere.

Q. We will mark that "Landing." Were there any other places where you have seen them cross the river?

A. Well, they could cross—I can speak of where I crossed it.

Q. Well, where did you cross it?

A. I have crossed it there from Covington Point and down there too, most anywhere there till we got to this swift water down here. After we got along in here I never wanted to try to cross it because the water 's all swift.

Q. You have crossed it any place from Covington Point?

A. In any place; a number of places.

Q. A number of places, from Covington Point down to a point a little east of the head of Three Mile?

A. Yes. Then after we got down here we could cross most any place.

Q. That is below Three Mile rapids?

A. That is below Three Mile rapids.

Q. Have you personally crossed in those places, Mr. Whitcomb?

A. Yes, sir. I took the old man Covington up there once, and he got sea-sick.

Q. Took him up where?

A. From The Dalles up to his place.

589 Q. By the way, you have been speaking of this map. Did you have anything to do for the Government up there, relating to maps?

A. Well, I worked for the geodetic survey there at this time, when this map was made. I think probably that is the same map, but I am not sure about that. I only know because the map was made about that time.

Q. By the way, Mr. Whitcomb, I will show you defendant's Exhibit E and ask you if you recognize that?

A. Yes, I recognize this place.

Q. That represents what?

A. That represents the cannery and the railroad crossing across Five Mile Creek.

Q. I will ask you if you can locate the head of Three Mile on that picture.

A. Well, it would be a pretty hard matter to locate it right there exactly because it is not in sight. It is down in here, you see. This cuts it off there, you see.

Court: That rock?

A. Yes; from this view. Now, the general picture is very natural.

Q. How about that point down there at the head of Three Mile?

A. I cannot see the point there at all. This rock obstructs the view. Of course, I could point it out where, I could locate it there, but it would not be in view.

Court: You better get somebody that took the picture to locate it certainly.

A. Yes. I would not undertake it, the way the picture shows.

590 Q. What would you state about this location down there?

Is that very accurate, to your mind?

A. It looks very natural to me. Now remember, this has been twenty years.

Q. I mean the particular point in question.

A. This point that runs out here, yes.

Q. But you cannot see—

A. No, you can't see the end of that point there. You see, it is obstructed from this view here.

Q. Did you have any other Government, do any other Government surveys up there while you were there?

A. No.

Q. How about water gauges?

A. Why, yes, I did. I read the water gauge for my father. He had, I suppose it was a commission.

Q. How long did you read that water gauge?

A. About 2 years.

Q. Were you familiar with the rise and fall of the river?

A. Yes.

Q. And navigation upon the river during those stages?

A. Well, of course, we were so familiar with the stage of the water by the reading of the gauge that we knew when we could go to certain places by the reading of the gauge.

Q. Now, about going to The Dalles, when did you?

A. Well, when the gauge would show about between 10 and 15 feet above zero, we didn't very much care to go down through there.

Q. But below what point did you feel satisfied?

A. Well, 6 or 8 feet. Of course these gauges were located in a different position. This one I speak of was located particularly near Memaloose Island, and of course the water raised a good deal more there than it would at Three Mile.

Q. What became of those records from the gauge at Memaloose Island, do you know.

A. They were all turned over to the Government. We made a report and turned in everything to the Government every month.

Q. Did you ever do any reading of the gauge down here at The Dalles?

A. No.

Court: At what stage could they cross the river from Big Eddy?

A. Well, we could get over there. I have done it, that was a kind of careless trip, when the gauge read 20 feet. I have been over there about 20 feet.

Q. When the water was high, very high, were there places on the river you could still cross?

A. Well, when it was very high I would not attempt it.

Q. How about the height of the river during fishing season?

A. Well, that varied in different years, you know.

Q. Well, even if it was fishing season, supposing it did vary, when the conditions for fishing were right, could you cross the river.

A. In the beginning of the season.

Q. At some place or other?

A. At the beginning of the season you could, and at the ending up of the season, but usually we could not in the middle of the season, which would be—

Q. Would that be fishing time then, when the river was high?

592 A. Well, say May, the 20th of May to the first of July it would not be very safe in the time say there, to cross it.

Q. Would that be a fishing season?

A. Yes, that was during the fishing season.

Q. That was still fishing season at some points?

A. Yes.

Q. With what regularity could you state that the Indians crossed from the north side to the south side to fish, Mr. Whitcomb?

A. I could not say as to that. They crossed there quite frequently.

Q. Would they come every year?

A. Oh, yes.

Q. Or omit years?

A. Every year, as I remember it.

Q. Now, early in the spring, where would they go to?

A. Well, there was points along the river that seemed to be earlier than others for fish.

Q. Where were those?

A. Well, they always told me down about Three Mile Rapids was a pretty early place to fish. I never fished there because it was not in our territory.

Q. With respect to catching fish down there, did they catch them before or after you caught them up at the Evans place?

A. Well, I have seen some Indians that came from over there with fish before I had them. As I was going to town I used to watch that business pretty close, because they used to sell fish there in town when I could not get them.

Q. Have you ever talked with Indians about their fishing places?

593 A. Oh, yes, they told me lots of stories about their fishing places.

Q. Did you speak their language?

A. I spoke Chinook, and understood at that time quite a lot of Warm Springs language.

Q. What was their habit with fishing places as to naming them?

A. Well, they seemed to have about the same kind of habit we had. If they thought they owned it, they thought it was theirs.

Q. As to naming them?

A. They had names for them, but I never could remember the names. I think most every fishing point on the river at a point where they could catch fish, I think the Indians had a name for it, as I remember now.

Q. Have you ever observed any particular activity with regard to the crossing just above Five Mile there, that you have mentioned a while ago.

A. Not any more so than——

Q. Did they just cross in canoes or not?

A. They could keep their canoes in the Big Eddy and they were safe there. That is, safe from the water. Even if they broke loose, unless there was a wind storm they would not be apt to go out of the Big Eddy.

Q. Did you ever see them cross any of their stock?

A. I have seen them cross horses there.

Q. Whereabouts?

A. Right at the head of this island, where I told you about.

Q. Right there?

A. Yes.

594 Mr. Bennett: He has testified fully about that.

Mr. Rankin: I didn't know he mentioned taking stock over.

Q. When they were fishing at the head of Three Mile, where did the Indians stay?

A. I could not say.

Q. Did you ever see any camps in the neighborhood?

A. There were camps around Jake's place.

Q. Jake Thomas?

A. Yes.

Mr. Bennett: How is that?

A. I think some Indians camped around Jake Thomas' place. I know there were quite a few wickiups around there.

Q. How, Mr. Whitcomb, did you ever go up the river above Big Eddy?

A. Yes, one time I did; then the water was very low.

Q. Explain that to the court.

Court: Why is that pertinent?

Mr. Rankin: I want to show, your Honor, that it was not any impossible feat to cross or to go up the river, above there.

Court: I think that has been testified to heretofore.

Mr. Rankin: Very well.

Q. Did you ever see any whirlpools and boils in that river?

A. Oh, yes; yes, lots of them.

Q. Was it dangerous to navigate when they were in the river?

A. Well, we usually knew where they was, and we kept out of them. I never had but one experience in them, and that was at the time that I helped this Government surveyor, Mr. Curtis, to make this survey.

595 Q. What was that?

A. We were over in the Big Eddy. We had a pretty good sized boat. Sam Evans, that is my step-brother, and I were rowing the boat. Now, the old gentleman thought it was not necessary for us to follow the bank and be so long in getting back to the landing; and we were over here in the eddy; the water was pretty well up at that time; it was a little bit higher than I really like to cross the river. He asked me to go from this point and go right straight down the river instead of coming around this point and follow the land where the water was broken, where we could navigate. We were rather dare-devil boys. I just went, "Sam," I says, "we will give him one." We went down through here, and we were down here before we landed.

Q. Did you strike whirlpools?

A. Yes, quite a number of them. The old man thought he was gone, pretty near.

Q. Was it possible to navigate the river and not endanger yourself with those whirlpools?

A. We did along the bank.

Q. What was the habit of the Indians as to whether they would go out in the center?

A. They didn't do it. That is where we learned to keep next to the bank.

Q. Learned it from the Indians?

A. Yes.

Court: Did you have those whirlpools when the water was low as well as high?

A. Yes. They were not so dangerous.

596 Q. Did you ever see Yakimas crossing below Three Mile?

A. Well, I have seen them cross the ferry boat.

Q. Just explain about that.

Court: The ferry boat was at The Dalles, wasn't it?

A. Yes, sir.

Court: That is sufficient about that, I think.

Q. When they left from The Dalles, where did they go, do you know?

A. Well, I know that there was one or two Indians that I am positive of that crossed there that had their teams, and they crossed at The Dalles, and then came along up the road up to a point on Ten Mile above the Floyd place and crossed over there, and came in above the mess-house; just a point above the rapids there. It is not marked on this map.

Q. During high water, Mr. Whitcomb, did you ever observe anything as regarding the point at the head of Three Mile?

A. I know that at high water that point right at the head of Three Mile was under water.

Q. Did you ever observe whether or not the tribes residing on respective sides of the river intermarried?

A. Yes, I know—not tribes; I know of some individual Indians.

Q. Who were they?

A. There was one Indian that lived just above the mouth of Five Mile, at least that was his camp, by the name of Jim—we called him Jim. He married Colwash's daughter. Colwash was, as I understand it, a Yakima Indian.

Court: Colwash was chief, was he; called the chief?

597 A. Yes, Chief Colwash.

Court: He was chief of the Yakimas?

A. I don't know whether—He was a chief. I could not say whether he was Yakima.

Mr. Rankin: The testimony was, your Honor, chief of the Wishhams.

Q. Were there other instances of that character.

A. Well, one of his boys, George we called him, married a Warm Spring woman.

Q. One of whose boys?

A. Colwash's.

Q. George Colwash, whatever his name was, married a Warm Springs woman?

Court: Where is George now?

A. I understand he is dead.

Court: Did he settle on the Warm Springs or on the Yakima?

A. I could not say.

Q. Were there other cases that intermarried, that you remember?

A. Well, not that I could personally call to mind.

Cross-examination.

Questions by Mr. Bennett:

— Now, Mr. Whitcomb, am I right in supposing that when you speak of the Yakima Indians you mean any Indians on that side of the river?

A. No, sir.

Q. Well, did you distinguish—I mean any of the Indians that live on the Yakima Reservation or belong to the Yakima Reservation.

598 A. When I speak of the Yakima Indians I only speak of those who showed me their pass, that came off the Yakima Reservation.

Q. Well, that would be any of the Indians, that might be any Indians that belonged on the Yakima Reservation?

A. I could not say as to that.

Q. About whether they were Klickitats or Yakimas or Wish-hams or Skeins—you could not say about that?

A. In one particular case I could.

Q. What case was that?

A. The case of one Indian that we called Allen.

Q. Called what?

A. That is, I only know from what he told me, Allen.

Q. That is the only case in which you could tell?

A. He told me that he was a Yakima Indian.

Q. But outside of that you could not tell?

A. A number of others that I could not call their names told me they were Yakima Indians, but the only way I have of knowing that they were Yakima Indians was by the passes they showed me from the Reservation, signed by the agent.

Q. Outside of their passes, you could not tell a Yakima Indian from any other one?

A. I don't know who could.

Q. Now, Mr. Whitcomb, at what stage of the river, by your gauge, do I understand you it was safe to go up and down the river from your place?

A. To what point?

Q. What say?

A. To what point?

599 Q. Well, to the point where you lived; up there to your landing, at what stage of the river—up to what stage of the water?

A. To what other point on the river?

Q. Well, from The Dalles up to your landing.

A. Oh, I get you now. Well, between eight and fifteen feet. We went, as I remember it, at about that stage of the water.

Q. On your gauge?

A. Yes.

Q. And above that you didn't consider it safe?

A. No, sir.

Q. And of course it was safer, I suppose, at 8 feet than it was at 15, a good deal?

A. Yes, quite a good deal.

Q. Now, your gauge—you say the water raised a good deal faster at your gauge than it did further down the river?

A. This was a Government gauge, you know.

Q. What say?

A. This was a Government gauge, you know.

Q. Well, I mean the gauge you were keeping. I mean by "yours"—

A. I understand you.

Q. I don't mean you owned it, but the one you were keeping, the one you were going by.

A. Yes, I understand you. Yes, it raised there faster than it did toward The Dalles.

Q. The river widens out down there, and the water doesn't raise so fast?

A. No.

Q. Now, do you know about how much faster it raises up there than it does down at The Dalles?

A. No, I could not say. I am not familiar with the gauge 600 marks there.

Q. Well, when the water was fifteen feet by your gauge, it would not be more than eight or ten down at The Dalles, would it?

A. I could not tell you because I don't know.

Q. You can estimate it pretty close?

A. It would be only a guess, and I don't think guesswork ought to go. Of course, there is a good deal of difference in the river there in the width of it. It would only be a guess to me.

Q. What say?

A. There is a good deal of difference in the width of the river there, and it would only be a guess, and I would not want to guess them.

Q. Didn't you ever pay any attention to it and notice it going up and down the river?

A. Well, I paid attention to the water, but I could not tell the number of feet.

Court: That has been testified to by the engineer. He testified that there was a difference between the stage of water between The Dalles and this up at the Cascades or up above.

Mr. Bennett: I know. There are different points, though, your Honor. For instance, up there above the narrows the water rises 97 feet, as high as 97 feet, when it would not be more than a little over 40 feet at The Dalles; and at different points along the river it rises differently.

Court: Well, you may bring that out if you like.

Q. Now, from what you saw going up and down the river,
601 couldn't you make any estimate of how much at The Dalles
fifteen feet would be up at your gauge where you lived?

A. I never gave it any thought, Judge, at all.

Q. But you know it raised a good deal more there than it did down
below?

A. Yes, I know that.

Q. Now, what was it that made Mr. Covington sea-sick when you
took him up through there?

A. Well, we were down at The Dalles one time; you know the
wind blows sometimes pretty fierce across the river in front of The
Dalles. He was going up with us. We crossed over the river and
the waves ran pretty high.

Q. What?

A. In crossing the river to get over on the Washington side from
The Dalles to go up the river, the waves ran pretty high, and the
old man got sea-sick. It made me remember that time.

Q. It was enough to make a man sea-sick to go down through
those whirlpools most any time, wasn't it?

A. Oh, no. It might some men, but it would not others.

Q. Now, low water up there is usually in the fall of the year,
isn't it?

A. Well, and the early spring. Sometimes it is high in January,
and sometimes it is low. I have seen it quite low in January.

Q. Well, isn't usually the lowest water there in the late fall, when
it is very dry all through the country, or in the middle of the winter
when the excessive freezes make the water low?

A. Well, as I remember it, Judge, I think in January I
602 have seen the lowest water. I am not positive about that.
That is a long time ago to remember it.

Q. Now, then, isn't it a fact that from February on the water is
constantly raising, as a rule?

A. Yes; or raises and falls.

Q. Well, but isn't it constantly growing gradually higher?

A. Oh, no.

Q. Maybe it will go up a little and down a little, but from week
to week it is gradually usually getting higher, isn't it, from Febru-
ary on?

A. Well, I don't know from February on, whether it would go
back to zero or not. I don't think it probably would.

Q. You don't think it would?

A. I don't think it would. In some years it might.

Q. Generally in March the water is up quite a bit, isn't it?

A. Some seasons of the year it is not up so very much.

Q. Generally, isn't it?

A. No, not as a general thing.

Q. That is the time when the heavy rains are falling and the ice is
thawing out?

A. In March?

Q. Yes. Isn't it, usually?

A. Well, I never knew the heavy rains at The Dalles to affect the Columbia River.

Q. Well, rains all up the upper country, doesn't it, along in March?

A. The rains never seemed to affect the river so very much.

Q. What say?

A. The rains that was there I don't think ever affected the Columbia River very much.

603

Q. Don't you know, as a matter of fact, Mr. Whitecomb, that the water in the Columbia River commences to raise, as a rule, early in the spring, and continues to come gradually up until when the warm weather comes it comes up fast?

A. Well, it starts to raise after the spring, but not from the rains. As I understand it, and I only get this from the statistics as I have read them, that the high water in the Columbia River occurs from the melting snow, not from the local rains.

Q. Well, the excessive high water may come from the melting of the snow; but isn't it a fact that the snow begins to melt on the low lands clear up about the headwaters of the Umatilla, about the headwaters of the Deschutes, and about the headwaters of all the streams that feed the Snake and Columbia Rivers?

A. Yes, the Snake.

Q. That it commences to melt in March?

A. The Snake River rise comes before the Columbia. It comes earlier; usually, not always.

Q. Well, now, then, answer my question, if you will; if the river doesn't gradually raise, as a rule, when you take it generally—I am not saying every year, but generally—if it doesn't raise, gradually, from February on?

A. Well, no. I have seen the river pretty low. I have seen it frozen up in February.

Q. And if it was frozen up, it would be low?

A. It would be low.

Q. But as soon as it thawed out, it would commence to rise?

A. Yes, it would raise some; sometimes quite rapidly.

604

Q. Now, what time do the fish generally commence to run in the river?

A. Well, that varies.

Q. In the spring?

A. That varies. It is according to the spring.

Q. Well, over what time does it vary?

A. Well, there is a few fish; I have caught a few fish along in March.

Q. The last of March?

A. No, along some time in March, I could not tell just when. I could not—I want you to understand that I could not remember for about 30 years, this. It is something I didn't pay a great deal of attention to.

Q. No, but you testified to remembering as much as to see nets in a boat.

A. I didn't say just exactly what day and what month it was, though, Judge.

Q. I am not asking you to now; but about what time does the fish commence to run, as a rule?

A. Well, April is a pretty good season for fish.

Q. The last of April, would you say, or the first?

A. The first of April they start to run some years; some maybe not.

Q. Now, during these years that you lived at The Dalles Fishery, as I understand, you didn't have any cannery or anything of that kind?

A. We salted salmon.

Q. You had some tanks for salting salmon?

A. Yes, sir.

Q. And about how much salmon did you ordinarily put up?

605 A. Well, I think one year we put up about, as I remember, in the neighborhood of 2,000 barrels. I am not sure as to that. I am not positive about that, but that is my recollection.

Q. Did you own or did you occupy any land below the mouth of Five Mile Creek?

A. No, sir.

Q. How far above Five Mile Creek was the lower limit of your land?

A. Well, as I pointed out on the map, I don't remember just the exact distance, although I have traveled over it a good many times; but from Five Mile Creek up to what I termed there this lower landing, that would be, here would come Five Mile Creek; here is this lower landing; somewhere right along there; I don't remember just exactly where the point is the line crosses—somewhere in there close to that lower landing.

Q. How far did you say?

A. Somewhere along there, this point right here, at this lower landing.

Q. Well, how far is it, about, from the mouth of Five Mile Creek up there?

A. Well, I don't know just exactly, Judge. It is less than a mile, I think.

Q. Well, that is near enough. Now, how far up the river did you go from that point?

A. The land that we occupied?

Q. Yes.

A. Well, I think it ran up there for over a mile.

Q. How far was the mess house above your lower line?

A. Well, I think it was about a mile. I am not sure.

606 Q. That was at about your upper line, was it?

A. Yes. No; that is, of that place proper. But then we had another piece up at Celilo.

Q. Now, was there a fishing point at the mess house?

A. Yes.

Q. Was there a fishing point right in front of your saltery?

A. Yes, sir.

Q. Was that in a channel back from the river?

A. Yes.

Q. Did the Indians sometimes hook salmon with a hook at that place?

A. Yes, sir.

Q. Was there a little fall there next to the shore?

A. A little fall in the channel?

Q. Yes.

A. Yes, sir.

Q. A little perpendicular fall?

A. Well, the water ran down quite steep.

Q. Well, that was practically perpendicular?

A. Well, you might call it that way too.

Q. About from two to five feet, something like that?

A. Something like that, I think; maybe a little more or a little less.

Q. Do you know Wasco Charley? Did you know an Indian called Wasco Charley?

A. I don't remember him by that name. If I seen him I might know him. There is so many Indians by the name of Charley it would be pretty hard to tell which Charley it would be, you know.

Q. Was there an old Indian who lived down there at the time you were there, and who was in the habit of going out there and fishing sometimes?

607 A. Out at what point?

Q. At Three Mile Rapids.

A. No, I could not designate any particular Indian.

Q. How far was Jake Thomas's house from the wagon road?

A. Oh, quite a little piece.

Q. About how far?

A. It might have been a quarter of a mile; it might not have been that much.

Q. How far was his house from Three Mile Creek?

A. Well, it was up above the mouth of Three Mile, right out that way.

Q. How far from where the road crosses Three Mile?

A. Well, it is about the same distance. I could not tell you whether it would be an eighth of a mile or a quarter.

Q. What kind of a house did Jake Thomas have there?

A. Just like most any Indian.

Q. What say?

A. Kind of a shack of a house.

Q. Was it a house or a teepee?

A. Well, he had a kind of a house there.

Excused.

608

JAKE THOMAS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Mr. Thomas?

A. I live at the Warm Springs.

Q. How long have you lived there?

A. Well, I lived off and on; not exactly any length of time.

Q. How long since you went up to warm Springs?

A. That is to live, you mean?

Q. Yes.

A. 1888.

Q. 1888?

A. Yes.

Q. Where did you live prior to going up to Warm Springs?

A. I lived right at Wah-sucks, the Lone Pine. From there I left.

Q. From there you went up to the Warm Springs?

A. Yes.

Q. Where was your house there? Anything there now to mark the place where your house was?

A. No, I don't know if there is anything there or not; it has been all knocked down.

Q. Did you own that place then?

A. Once, yes.

Q. What became of it?

A. I sold it to Wasco Charley.

Q. Is that where Gulick's place is?

A. Yes.

Court: His is not the Gulick's place, though?

Q. Yours was not the Gulick place, yours was down where Wasco Charley lived?

A. No, where Gulicks lived.

Q. Oh, that was the Gulick place?

A. Yes.

Q. Where were you born?

609 A. I was born here at The Dalles.

Q. Do you remember when?

A. Born November 15, 1846.

Q. November 15, 1846?

A. Yes, sir.

Q. Do you know where Wah-sucks is?

A. Yes.

Q. Have you ever seen Indians fishing there?

A. Yes.

Q. Where from? Where were the Indians from?

A. Everywhere.

Q. Just name some of the tribes from which the Indians came.

A. Well, there were Indians from Washington side, what they called the Wish-hams, crossed over to fish, and also the Wasco tribe.

Q. What were their relations?

A. What?

Q. I mean by relations whether they were enemies or friends.

A. Yes, they were friends and relations both, and married into each other; and they were allowed to come there each way, both ways.

Q. Both ways?

A. Yes. They were welcome there whenever they crossed.

Q. You were allotted on the Warm Spring. Are you a Wasco?

A. A Wasco.

Q. Are you full blood Wasco?

A. Full blood Wasco.

Q. What was the importance of Wah-sucks as a fishing place?

A. Well, the fishing place is fishing place, that is all I know of.

Q. Was it important for the number of fish?

A. Well, it was important also for camping. People from the Cascades there come up to fish.

Q. What other importance did it have?

A. Well, for fishing.

Q. What time of year did they fish there?

A. Well, in the Spring to along in the middle of the Summer sometimes when the water was not too high.

610 Q. How did they fish there?

A. Nets, dip nets.

Q. Dip nets?

A. Yes.

Q. Where did they camp?

A. They camped right there at Wah-sucks, Lone Pine. I know the Lone Pine. I have seen the Lone Pine.

Q. You have seen that pine?

A. Yes.

Q. Tell the Court about it.

A. Well, I have seen it grow on a kind of a peak there, that was high peak; and it was pretty bushy,—bushy tree, you know.

Q. Was it very thick through?

A. Well, it was pretty thick through, short, you know.

Q. Have you ever seen Yakimas fish there?

A. Yes.

Q. Where did they come from?

A. Well, the Yakimas is part of the Indians that left when the treaty was made, over to Yakima from Wish-ham, you see.

Q. Yes.

A. And for that reason they fished before they were moved out there, before the treaty. And they all called Yakimas, and they all come. But still there were Wish-ham Indians. They come there to fish on their own side, but also over to Wah-sucks.

Q. How did they cross the river?

A. They crossed there at Wah-sucks, a little below, Kum-sucks, the Indian name, is a whirlpool.

Q. When were you last there, Mr. Thomas?

A. Well, I never have been there not to fish any more since 1888.

Q. 1888?

A. Yes, sir.

Q. Did they cross another place besides the one you mention?

A. Yes.

Q. Where?

611 A. Right above Mr. Gulick's place there is a place, the Indian name is Slickmink, and they crossed over there from the Washington, and also they crossed back. And then there is another place above Mr. Seufert's cannery—a place where they call there, they got two names out there, the Indian name Sleicki-Mueli. About three or four hundred yards above there is some choke-cherries always there ever since I knew, grow in a bunch. They called that the Choke-cherry ferry, you know. They called that Ku-Kuki-Nuch. That is regular Indian place. They cross the horses there.

Q. This first place, down below Ku-Kuki-Nuch, did that have white man's name?

A. No.

Q. Did you ever see white men cross there?

A. Yes.

Q. But it didn't have a name?

A. No.

Q. You only know the Indian name for that place?

A. Yes.

Q. Have you been along there recently?

A. Not recently.

Q. You don't know of any land-mark there that the whites know, just where that crossing is now?

A. No, not anything particular.

Q. Were there other places, Mr. Thomas?

A. Yes. Yes, they crossed away above. Tenino, they called the Memaloose Island.

Q. How did they cross there?

A. Well, they crossed in canoes, dug-outs.

Q. Where did they come from and where did they go to? Where did they come from, when they took those canoes? Where did they come from?

A. Oh, they made them.

Court: Where did the Indians come from?

A. Oh, the Indians came from the Washington side, or the Oregon.

612 Q. Crossed back and forth?

A. Backward and forth. And there is another crossing place where they called Memaloose Island, also below Big Eddy, right there. They crossed there.

Q. Crossed at Big Eddy?

A. Oh, yes, they crossed there.

Q. You spoke of crossing stock. Did they cross much stock there?

A. No, not much; only sometimes they crossed horses there. As for that matter, I crossed horses there.

Q. You crossed horses there yourself?

A. Yes, I myself.

Q. What were you crossing horses for?

A. Well, I got some over Washington side, Wish-ham side, and brought them. They were my own horses, and crossed them right there because there is a good crossing at time of low water.

Q. Did you ever fish at Wah-sucks?

A. Yes, sir.

Q. How long did you fish there before 1888?

A. Oh, a long time; long time; many years before there was any whites; before there was any boundary or nothing.

Q. How about the Indians recognizing boundaries? Did they think the Washington Indians could only fish on the north side, and Wascos only fish on the south side?

A. No boundaries.

Q. No boundaries?

A. No, no boundaries.

Court: You said a while ago, in effect, that the Wasco Indians allowed the Wish-ham Indians to come over there and fish. Did the Wish-ham Indians have any right there outside of what the Wascos allowed them to do?

A. No, not as I know of.

Court: What?

A. Not as I know of. All of them crossed over and fished
613 there, and also the Wascos crossed over to that place and fished.

Court: Well, suppose the Wascos had objected to the Wish-hams coming over, would they have come?

A. Oh, I don't know nothing about it. They never objected.

Court: Did the Wish-hams have a right absolutely to fish there?

A. They just thought both had rights, each.

Court: Did they have as much right to fish there as the Wascos?

A. Just as much; all they wanted.

Q. You spoke of crossing in the canoes. Did they just bring the canoes down there to cross, or did they keep them there? How about that?

A. They sometimes brought them down; sometimes kept them there; just as was handy to them, you know.

Q. Who had those canoes?

A. Well, there was one old fellow that lived at Wah-sucks, he had some canoes: and I believe he was a canoe-maker. He was called Kum-sick-sick.

Q. That was his name?

A. Kum-sick-sick. He lived at Wah-sucks; was born there, I believe; old fellow.

Q. Did you know anyone on the north side of the river who had canoes that they made for crossing?

A. Yes.

Q. Who?

A. On the Washington side?

Q. Who?

A. Old man Colwash had them, the chief.

Q. Was there any other man that you knew of?

A. Yes. There was one man named by Indian name.

614 Q. What was his Indian name?

A. His name is Tallicum. He is dead now. He had a canoe.

Cross-examination.

Questions by Mr. Bennett:

— Do you claim to have lived at Wah-sucks all the time before 1888?

A. Yes, sir.

Q. Now, in the summer of 1881, weren't you living down at Crate's point?

A. No, sir.

Q. Weren't you fishing for sturgeon down at Crate's point?

A. Yes.

Q. In 1881?

A. No.

Q. Did you ever live down there and fish for sturgeon?

A. I lived down there, but not at that time. I lived Wah-sucks 1888.

Q. Well, where did you go when you left Wah-sucks in 1888?

A. I went to Warm Springs; been there ever since.

Q. Did you ever live down at Crate's point?

A. Why, certainly; that is, camped for a while, a few days.

Q. What year did you live down there?

A. Well, I fished all along before, that is, before 1888, along, often.

Q. Before 1888?

A. Yes, often.

Q. Well, now, did you go down there to live at Crate's point before 1888?

A. Not to live; only just camped temporarily for a day or two, something like that.

Q. You didn't go down there and stay five or six months at a time?

615 A. Oh, no. No, sir.

Q. Where did you camp when you went down there?

A. Well, I camped along at Crate's Point; that is, a little below and a little above. I forget the man's name that lived there. I camped there for a night or so, that is all, at each place, because I was fishing along the Columbia for sturgeon.

Q. How many summers did you fish for sturgeon along the Columbia?

A. Oh, lots of summers. I can't count them. Many years I fished.

Q. Were you fishing for sturgeon in the summer of 1887?

A. Yes.

Q. How long did the sturgeon fishing last?

A. Oh, it lasted the year around.

Q. The year around?

A. Till the river closed up.

Q. Your main business in those years was sturgeon fishing, wasn't it?

A. Yes. I am a regular sturgeon catcher.

Q. I say that was your main business during those years, was sturgeon fishing?

A. Yes, main business; and salmon, catching salmon.

Q. Now, in surgeon fishing, you go out on the river in a boat, don't you, and set hooks out?

A. Yes, sir.

Q. Fish hooks?

A. Yes.

Q. Just like catching trout, only they are bigger hooks?

A. Yes.

Q. Now, was your place that you sold to Wasco Charley on the island, or was there any island there?

616 A. Well, right where Henry Gulicks live——

Q. Well, is that on the island or on the other side of the slough?

A. Well, it is on an island, I call the island. Water goes around it.

Q. At high water?

A. At high water, yes.

Q. Was there one slough between you and the river?

A. No.

Q. Are the two sloughs together down through there?

A. Yes. It is one slough; one channel goes down there.

Q. Were you between that slough and the channel, your house?

A. My house is between that channel and the main river, the Columbia, part of the Columbia on down there.

Q. Were the slough and the channel both on the same side?

A. No, the slough is back from the house, west.

Q. Well, then, the house was between the channel and the slough?

A. Yes.

Q. When did you sell out to Wasco Charley?

A. Well, it was some—well, before I left. I don't know what time exactly.

Q. Did you just sell your house to him, or did you sell the fishing place, too?

A. The fishing place.

Q. And what was your fishing place, to fish with a dip net or with a spear?

A. It was dip and spear both.

Q. It was a place where you could fish with a dip and a spear?

A. Yes.

Q. And how long had you owned that place?

A. Oh, I owned it four or five years, I think.

617 Q. Before you sold it to Wasco Charley?

A. Yes.

Q. Now, as I understand you, it was the Wish-ham Indians that came over from the other side?

A. Yes.

Q. And you call them Yakimas because they are now on the Yakima Reservation?

A. Yes.

Q. But it was really Wish-ham Indians?

A. Yes. Well, of course, there was Yakima Indians, part of them, after they got over. And the Yakima Indians came along with them, of course.

Q. After they went over on the Reserve, sometimes they would bring Yakima Indians over with them?

A. Yes. Yes.

Q. Now, after 1888 you don't claim to know anything about it?

A. I don't claim to know anything about it. I cannot, because I was not there.

Q. Now, Jake, in dipping with a dip net for salmon, do you dip with the current or against the current?

A. With the current.

Q. With the current?

A. Yes, sir.

Q. And what kind of a place do you dip—in swift water or still water?

A. Well, no; we dip in both places; sometimes whirlpools, why, dip slow; and sometimes fast, just as the water—because of the rising of the water, you know, sometimes it goes swifter, you know.

Q. What say?

A. When the water rises it gets swifter, of course, and still dip.

Q. You have to have swift water to dip, don't you?

618 A. Yes.

Q. So that the fish can't see the net?

A. Yes.

Q. Then you dip with the current?

A. Yes.

Q. How close do you have to be to the water to dip successfully?

A. Well, right close.

Q. What say?

A. Right close; within a foot or half a foot. You mean to stand?

Q. What say?

A. You mean that you stand to dip?

Q. Yes. How close to the water would you have to stand?

A. Well, I stand right close to it.

Q. Within a foot or so of the water?

A. Yes, or closer.

Q. You couldn't dip 10 or 15 feet, could you?

A. No. No, that is out of the question.

Q. What say?

A. That is out of the question. You could not stand.

Q. It would pull a man off every time, wouldn't it?

A. Yes.

Q. Now, about these crossing places. As I understand you, there

were three crossing places between The Dalles and the Big Eddy. Is that right?

A. That is right, sir.

Q. One of them was just below Kum-sucks?

A. Yes; below the Kum-sucks place.

Q. Yes, just below that?

A. Yes.

Q. And in the still water just below it, at the foot of the rapids?

A. Well, it is pretty good water.

Q. And then the next one was up the other side, up above the Gulick place, was it?

A. Yes.

Q. Do you know where Mrs. Covington lived?

A. Yes.

619 Q. Where was the Oregon landing with reference to Mrs. Covington's place?

A. Well, that is another different crossing.

Q. What say?

A. That is a different crossing, where Mrs. Covington lived.

Q. That is not the one that is above the Gulick place?

A. No. The crossing right above the Gulick's place there, right over, don't come near Covington's, from Gulick's place.

Q. How far is that below the Covington place?

A. Well, it is just a little ways; about a quarter of a mile.

Q. About a quarter of a mile, you think?

A. Yes. I think so.

Q. And how far about the Gulick place is it?

A. Well, I think it is about a quarter of a mile, or half a mile, or something that way.

Q. Above the Gulick place?

A. Yes.

Q. That is the second crossing. Now, the third crossing is up there above the mouth of Five Mile Creek, is it?

A. Yes.

Q. And how far about the mouth of Five Mile Creek?

A. Oh, it is not very far, three or four hundred yards.

Q. At that crossing, do you land on the Washington side at the Big Eddy or below the Big Eddy?

A. Below Big Eddy.

Q. Below the Big Eddy?

A. Yes.

Q. Is there a little island over there across on the Washington side, about where you land?

A. Below that little island?

Q. You land just below that little island?

A. Yes.

Q. And kind of back of it?

A. No. Below it. No, not kind of back; just a little bit below; about one hundred yards, I guess.

620 Q. About one hundred yards below?

A. Yes.

Q. And then is there another crossing, a fourth crossing, from the Big Eddy?

A. Yes.

Q. And where do you land on the Oregon side?

A. From the Big Eddy?

Q. Yes; from the Big Eddy.

A. Cross right there, a little below the Memaloose Island, they call it.

Q. A little below what?

A. Memaloose Island; grave yard. There is a Memaloose Island there.

Q. A little below Memaloose Island?

A. Yes, a little below that.

Q. There is a bend in the river above Five Mile, right above Five Mile there, about half or three-quarters of a mile, isn't there a bend. You turn around that bend when you are going up the river to go up towards the Big Eddy?

A. Yes.

Q. Well, now, that landing across from the Big Eddy—where is it from that bend?

A. Well, there is two islands there. There is one little bit of an island below, and one a little above. And we land from Washington right between them, below the Memaloose Island; right to the shore.

Q. Now, I wonder, Jake, if you couldn't understand this map. I wonder if you couldn't understand this. Now, would you recognize that as being the Big Eddy, and this as being Memaloose Island here, and this the other island, and Five-Mile Creek coming
621 into the river here. Would you recognize that as the Big Eddy? Do you think you could tell from the picture where you crossed there?

A. I don't know.

Q. You don't know. Can you see pretty good?

A. No, I can't see good.

Q. Well, now, this is the Big Eddy, Jake.

A. Yes.

Q. This is the river coming up here like this, you know.

A. Yes.

Q. Now, this is the point in dispute, that you call Kum-sucks. Then the river comes up around here, you see.

Mr. Rankin: Pardon me. I wonder if he can see. Get over here close, and look at it, Jake.

A. Yes.

Q. Now, here is the river comes on up here, like this.

A. Yes.

Q. Now, here is the point in dispute. Now, in here somewhere is the Gulick place. I can't point that out exactly. Now, here is Covington Point, see, right there. And here is the mouth of Five Mile Creek, where Five Mile comes in. And here is the Big Eddy around here. The river runs up through here. And here is the

Big Eddy, and here is the rapids, the narrows, where they come down. You know that?

A. Yes.

Q. Now, then, when you came across from the Big Eddy, did you land right here by these islands?

A. When we come across from the Big Eddy, anywheres from the Big Eddy, we crossed right down between here to land.

Q. And sometimes did you come down here and land?

A. Yes.

Q. Yes, sometimes you came down there.

A. Yes, certainly.

622 Redirect examination:

Q. Jake, you don't mean to say that you have to get within a foot and a half of the water to dip, do you?

A. Oh, well, most any distance.

Q. How did they dip off Kum-sucks? How high were they above the water there?

A. I will tell you about dip-netting.

Q. Yes.

A. You see, in a case that the bank is steep and square, you stand right close to the bank, within a half a foot of this bank to dip.

Q. Yes.

A. But in the case of a shore kind of that way, lay off that way, then you stand farther back, because the water washes over that, you see.

Q. Yes. Now, did you ever see the Indians take a plank or a couple of small trees and put out over the water, like that, we will say, and put boards across here?

A. Yes, sir.

Q. Well, how high would those boards be above the water?

A. Well, all kinds; all kinds of distance, you know.

Q. Would they be more than a foot and a half?

A. Oh, yes.

Q. About how high?

A. Five feet sometimes; four feet sometimes; six feet; even eight feet.

Q. And have you seen them fish off Kum-sucks?

A. Yes.

Q. The rocks at the edge of the water at Kum-sucks?

A. Yes.

Q. What did you mean when you spoke about being a foot and a half?

A. Well, standing to the bank.

623 Q. Oh, to the edge of the bank?

A. Yes, that is what I mean.

Q. Now, did you ever know of any Yakimas of the real Yakima tribe; not Wish-hams gone to Yakima, but real Yakimas?

A. Yes.

Q. Who came down there and fished without Wish-hams with them?

A. Yes.

Q. Now, another thing. When you sold your fishing place to Wasco Charley, sold your place and fishing place, did you think that you didn't have a right to go back to Wash-sucks and fish?

A. No. I had a right to fish there all I wanted to.

Q. All you wanted to?

A. Yes.

Q. How old did you say you were, Thomas?

A. 69.

Q. Are you a full-blood Indian?

A. Full blood.

Q. What was your father's name?

A. Thomas.

Q. And his father before him, named Thomas?

A. Thomas, yes. He was in the United States army at the time of the Cayuse war.

Q. Oh, he took his name from that?

A. Yes. He was well acquainted with Colonel Wright and Governor Fulton.

Q. Oh, you were?

A. Yes.

Q. What is the Indian name for Thomas?

A. His name is Que-as-solt.

Recross examination:

Q. Oh, Jake, you remember the Yakima war?

A. I remember it.

Q. Your tribe was friendly, wasn't it, to the whites?

A. Yes.

Redirect examination:

Q. What was that Yakima war?

624 A. Well, I was not big enough to know what it was. All I heard of it is afterwards. I never saw it, you know. It was war, that is all.

Recross examination:

Q. You were not big enough to remember then?

A. Not what it is for.

Excused.

Court: Is that the war of 1855 and 1856?

Mr. Bennett: That war was from 1855 to 1858, your Honor. It was in 1855 and 1856 that the volunteers had to do with it, and then the regulars came in and they fought until 1858.

625 CHARLES WANNASSAY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— What reservation are you on, Charles?

A. Yakima Reservation.

Q. How long have you been there?

A. I have been there for 27 years.

Q. What tribes did your parents belong to?

A. My father was a Cowlitz, and my mother was a Yakima.

Q. Belonged to the Yakima tribe, or one of the federated tribes?

A. No, the Yakima tribe.

Mr. Bennett: Your mother, you say, was Cowlitz?

A. My father was Cowlitz.

Mr. Bennett: And your mother was a Yakima?

A. Yes.

Q. How old are you, Charley?

A. I am fifty.

Q. Did you ever fish on the Columbia River

A. Well, not with dip net. I fished with salmon net, that is gill net, set net.

Q. Where did you fish?

A. Around Dalles.

Q. Do you know Three Mile Rapids?

A. Yes, sir.

Q. Did the head of Three Mile Rapids have an Indian name?

A. Well, it is the Lone Tree that time.

Q. Lone Tree?

A. Yes.

Q. Did you ever fish at Lone Tree?

A. Yes. There is a good eddies there a little below that little slough.

626 Q. Good eddies for what?

A. Set net.

Q. When did you fish there, Charles?

A. Oh. Somewhere along about in 1887 or 1889; somewhere along there.

Q. Did you see other Yakima Indians fish there?

A. Yes.

Q. Who?

A. I seen them fish with net on just above me, with dip net.

Q. Who?

A. I seen this particular Indian that time was Wasco Charley.

Q. Well, I spoke of Yakimas. Wasco Charley wasn't a Yakima, was he?

A. No. I guess he lived right there, this Wasco Charley did.

Q. But did you see any Indians from your reservation up there?

A. Well, they come. I seen Seelatsee out there, Seelatsee and old Winnier, old man Winnier.

Q. Did the Yakimas come to Lone Pine regularly, or just once in a while.

A. Well, they come whenever certain time in the season they come there.

Q. What time in the season?

A. Oh, well, when the water was high that was only place where they could fish.

Q. When it was high?

A. Yes, sir.

Q. How high?

A. Well, I can't tell you. It comes pretty high there around Celilo and there.

Q. Well, I am not talking about Celilo; I am talking about down here at The Dalles.

A. Yes, sir.

627 Q. Down at Lone Tree.

A. Well, that is a fishing ground for high water.

Q. How high?

A. Well, I can't measure. I don't know how high it comes.

Q. Do you know whether or not this point overflows?

A. Some, yes.

Q. Well, when a point overflows, is it good fishing place?

A. No, I don't think so.

Q. What time in the season did they come there?

A. Oh, sometime in June.

Q. Do you consider that Lone Tree an early fishing place or a late fishing place?

A. That is early fishing place. When the first part of the season, that is in June, high water; and after the water gets low, somewhere along in July, they fish further up, Wish-ham and Celilo and so on.

Q. How did the Yakimas get down to Lone Tree?

A. Oh, they crossed right there by that Big Eddy. They have canoe to cross there. And sometime crossed a little below the rapids. There is a swift place there, rapids.

Q. That is below Three Mile?

A. Yes.

Q. Below Three Mile Rapids?

A. Well, that rapids I mean is below that cannery; right outside this Indian village.

Q. What Indian village was that?

A. Well, that is where Wasco Charley's place is.

Q. Do you know where Covington lives?

A. I don't know.

Q. You spoke of them crossing in canoes. Where did they get their canoes?

A. Oh, the Indians have them. They make them themselves.

628 Q. In your personal recollection, were the Indians from the south side friendly with the Indians from the north side, or were they enemies?

A. Not in my time they was not enemies. They all good time.

They used to come over there and have good time, eat with them and go home happy.

Q. Why did they come to Three Mile to fish?

A. Well, that is good fishing ground.

Q. Did you ever hear it discussed whether it was the Yakimas' fishing ground or not?

A. Well, it is all Indian fishing ground. They fish all together; sometime these people from Oregon go and fish on the other side, Wish-ham.

Q. Well, did you think you had a right to go there and fish?

A. Yes, sir.

Q. Did you think that right was saved to you?

A. Yes, sir.

Q. Always held for you?

A. Yes, sir. They have Indian law, you know. I can go and fish in your ground, and I fish in your ground, and I ask you. Yes, you can go and fish. I fish, and one man will come and he want a salmon. He don't have to ask me. He will just take that salmon and go on. I keep on catching salmon and he will keep on taking my salmon. And my family may be big. Four or five salmon there left. I slap myself. That mean "that is my fish now; you don't touch that salmon any more."

Q. Now, how about eating? Suppose you see an Indian camp over there. They are eating. That is their camp. Can you go over there and eat?

A. I go and eat.

Q. Do they have to ask you?

629 A. No, sir. The law, Indian law—if you was an Indian and I see you meal-time is ready, why, you go and eat. That is all right, that is satisfaction to an Indian. He thinks you are a gentleman. But if he asks you, they think you don't know much. You are just like something else, see, when they say come and eat. That is not right for an Indian to say that. But if the meals is ready, why, for all. They will give you a place and they tell the womens "Give him plenty more." And have big time, and they don't charge anything, meal, or any stopping place. All the Indians, the Yakimas and the Wascos together. Because I know about the Indian tribes.

Cross-examination.

Questions by Mr. Bennett:

— Are you full blood Indian?

A. Yes, sir.

Q. How old are you?

A. Fifty.

Q. Now, at this time when you were fishing. You say that was a place for fishing in high water, along in June?

A. Yes, sir.

Q. Was that the time you were fishing there, that kind of water?

A. Well, we come, yes, I—

Mr. Rankin: Did you have something to add, Charles? Were you going to say something more?

A. Why, yes, I was going to tell.

Mr. Bennett: All right. Tell me as quick as you can.

A. Yes. Well, I was going to tell you. Those particular place that I fish. I was going to tell you that I know Dalles pretty well all the way from the ferry up there; all the way up to that eddy.

630

Q. Yes.

A. All the way up to Seufert's place.

Q. Do you know this map?

A. No, I don't know that map.

Q. Now, here is The Dalles down here.

A. Yes.

Q. And here is the river running along up here.

A. Yes, sir.

Q. Here is the point in dispute.

A. Yes. Well, where is Seufert's cannery?

Q. Here is the point in dispute, and here is the mouth of Five Mile Creek, and here is Seufert's cannery right in here on this point between Five Mile Creek and the river.

A. Yes.

Q. Here is the Big Eddy up here.

A. Right here. Where is Wish-ham?

Q. Where is Wish-ham?

A. Yes.

Q. Well, Wish-ham would be away up here you see, three or four, or four or five *five* miles further up at the head of the rapids, isn't it?

A. Why, it never was there, man. Four or five miles up from Seufert's cannery, you say? Why, that is Celilo, man; six miles.

Q. Well, how far is Wish-ham from Seufert's cannery?

A. Well, it don't show it on the map. I can't tell you.

Q. No, it don't show it on the map. How many miles is it, about?

A. Well, you know Wish-ham I suppose better than I do, and them places, any particular point you want to know, you want to show me.

Q. Well, we don't care.

A. I don't care either.

631 Q. We don't care about Wish-ham. If you can locate the map here. Here is the Big Eddy, you understand that, don't you?

A. Yes. The Big Eddy. Now, which eddy? There is lots of eddies in that river, man.

Q. Do you know the place called the Big Eddy?

A. Well, one that is below Wish-ham, where the crossing place is. About how far from the Big Eddy to this rapids you are talking about now, how far is that?

Q. Yes.

A. How far?

Q. Well, I would not try to tell you just how far it was, but here is the mouth of Five Mile Creek.

A. Five miles from Dalles.

Q. Five Mile creek; and here is Mr. Seufert's cannery; you know where that is, don't you?

A. Where is Three Mile Creek?

Q. Well, as I understand, Three Mile Creek comes down in here somewhere, runs into the slough and runs down there.

A. Yes.

Q. Now, in here somewhere is Mr. Gulick's place.

A. Hum-hum. Well, you say.

Q. Now, here is the point they call Kum-sucks.

A. Yes.

Q. Now, whereabouts were you fishing?

A. Well, here is the rapids, you say?

Q. That is the rapids?

A. Yes.

Q. This rapids is all the way around here, as I understand.

A. No, there is one rapid there

Q. All right.

A. Yes, and that is the Big Eddy. Here is Seufert's cannery, you say?

632 Q. Here is Seufert's cannery right here.

A. Away down here. Well, how do you get this Big Eddy up there? How do you get that away up there?

Court: I do not think he understands that.

A. I don't understand your map.

Q. Well, the Big Eddy, this is the way the map man drew it.

A. Yes. Well, the big map man he didn't put how far, half-mile, quarter-mile or one hundred yards, or what it is. I cannot tell anything about your map.

Q. Well, you know where Seufert's cannery is, don't you?

A. I seen Seufert's cannery, yes.

Q. Well, now, here is Seufert's cannery here.

A. Yes.

Q. Now you know about how far that point is below Seufert's cannery, don't you?

A. Well, it can't be over a mile if it is anything. It ain't from here, from Dalles up to this place, it can't be over two miles. You don't figure anything there only the map. Now you got me. I don't know where your fishing ground, nor where you are talking about. You show me the point where this Indian village, and where the cannery; I will tell you all about it.

Q. Well, you can't tell from the map, can't you?

A. No, not that map.

Q. All right, all right. How far from this point Kumsucks were you fishing?

A. Down. Oh, about quarter mile, something like that, below it. Lots of good eddies there; it is right on the sand point.

Q. Close to the Oregon shore?

A. Oregon shore.

Q. Close to the Oregon shore?

A. Yes, sir.

Q. There is another point runs in below where you were fishing, isn't there, runs out toward the river there?

633 A. Well, there is several points.

Q. Well, there was another point right below where you were fishing, wasn't there?

A. Why, no; there is the eddy; there is no point there; it is only the point that comes around. I have been right in that river, mister. I go up in a small boat up to this eddy.

Redirect examination:

Q. You know where Three Mile Rapids is up there?

A. Yes.

Q. Did you fish below, further down the river, or above?

A. Below.

Q. Did you ever fish above the rapids?

A. No, not with set net.

Q. Not with set net?

A. No.

Q. Ever fish above any way?

A. No.

Q. Never did?

A. No.

Q. Where did you fish with dip net?

A. I didn't fish with dip net.

Q. Oh, you fished with set net?

A. No. Set net.

Mr. Rankin: There is a question that properly belongs to direct examination, but I don't think there is any question about it; I just want to ask the witness.

Q. You know Sam Williams?

A. Yes, sir.

Q. How long have you known him?

A. I have known him since I was a boy.

Q. Did you ever see him fishing at the head of Three Mile or Lone Tree?

A. No, I never see him fish.

Adjourned until 10 A. M.

Excused.

634

PORTLAND, OREGON, January 28, 1916—10 a. m.

T. H. JOHNSON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Mr. Johnson?

A. I am living in Portland now.

Q. What year were you born?

A. 1852.

Q. You were not born in Oregon?

A. No, I was born in Canada.

Q. When did you come to Oregon?

A. I came in 1876—oh, no, 1878, to Oregon.

Q. And when did you go to The Dalles?

A. That same year.

Q. What did you do when you first went to The Dalles?

A. My first work was on the steamboats on the upper river.

Q. From where to where?

A. From Celilo to Umatilla.

Q. What did you do after that?

A. Why, I was working at fishing and raising vegetables.

Q. Where was that?

A. That was at the Evans place, at Mr. Seufert's place.

Q. Was the Evans place and the present Seufert place the same?

A. Yes, sir.

Q. Where was the Evans place located? Was the Evans place at the foot of Five Mile?

A. At the foot of Five Mile, yes; it was above the foot of Five Mile.

Q. You know where the present Seufert place is?

635 A. Oh, yes, I know where it is.

Q. That is at Five Mile, isn't it?

A. Yes, the cannery is at Five Mile. The Evans place was above that.

Q. Did you have any interest with Mr. Whitcomb in the fishing?

A. Yes. I worked there for them, oh, for two or three months, and then I bought Sam Evans out. He and Whitcomb were partners. I bought him out.

Q. And what years were you there at the Evans place?

A. 1879 and 1880.

Q. Was Mr. Seufert there then at the foot of Five Mile?

A. No, Mr. Seufert was in The Dalles I think; yes, he was there at The Dalles both those years; I think he was; I won't say positively he was the first year.

Q. Do you know this property?

A. Yes, I knew the property.

Q. Had you any interest in it?

A. In that property?

Q. Yes.

A. Nothing, only as a renter.

A. Are you acquainted with Three Mile Rapids above The Dalles, Mr. Johnson?

A. Yes.

Q. Ever fish there?

A. Well, no, I never fished. Well, I fished just above for sturgeon but never did there for salmon.

Q. Have you ever seen Indians over on that island?

A. Oh, yes, they have always lived there; went backward and forward there.

Q. What did you observe them doing?

636 A. Well, you see mostly just the cabins; once in a while you would see some Indians, as you usually see Indians, coming and going. They didn't do a great deal, but they was sometimes drying fish there, or fishing. There was very little of that done. They never done a great deal.

Q. How did they fish?

A. The only fishing was with dip net at that time. Oh, there was some speared with a spear, or with a spear and rope.

Q. Now, from the Evans place did you ever go down to The Dalles by boat?

A. Yes, a few times.

Q. Go through Three Mile Rapids?

A. Yes.

Q. Row-boat?

A. Yes.

Q. Now, did you ever fish for sturgeon any other place than at the head of Three Mile?

A. Oh, I fished from the head of Three Mile; I fished more in the Big Eddy, probably, than I did any place else.

Q. How did you get to the Big Eddy from the Evans place?

A. I crossed in a boat.

Q. Many times or few times?

A. Oh, a good many times. I went there when the salmon wasn't running. I went there most every day. There probably was never a week, and generally most every day for a good share of two years. That was our main ground for fishing sturgeon, and I was selling sturgeon, supplying the hotels especially at The Dalles.

Mr. Bennett: Where was that?

A. That was at the Big Eddy. I was catching sturgeon, you know, and selling them for the market. That was my business. That was part of our business there.

Q. You caught them in the Big Eddy?

637 A. That was one of our best fishing grounds. It was all the way from Big Eddy and down to what they call Lone Tree and to the island there, down pretty close to. We hardly ever went down as far as the rapids.

Q. When you got those sturgeon out of Big Eddy and out of there, how would you take them to The Dalles, by land or boat?

A. We took them by land. We had a team come in every day; supposed to come every week-day.

Q. Ever see any Yakimas over on the south side of the river?

A. I have seen some there.

Q. Do you recall any particular ones?

A. Well, I had some work for us there for a couple of summers. There was one man, well there was practically two or three. I recollect one name; the others I cannot recollect.

Q. Who do you recollect?

A. There was one Jake Andrews. And then we had a cousin of Jake's. They didn't live on the island. They lived right in the field above where the fishery was, the main fishery, for part of two summers.

Q. During the time you worked at the Evans fishery, was that a good fishery or not?

A. Best that ever I seen.

Q. What was their method? How did they fish?

A. It was nearly all with dip net and with hooks.

Q. What was the method most used?

A. The dip net was the main thing.

Q. Did you ever see Indians camp down there at the head of Three Mile?

A. Did I see them? Yes.

Q. Where did they camp there?

A. Oh, what we called the island; I don't know what they called it.

638 Q. What were their relations, Mr. Johnson, the Indians on the south side with the Indians on the Washington side?

A. Well, I didn't know any difference in them. That is as far as— They were good; the relations were good. I guess that is the way to put it.

Mr. Bennett: How is that?

A. I say the relations were good.

Q. State whether or not they were friendly or otherwise?

A. Well, friendly, as far as I knew. I didn't know of any difference.

Cross-examination.

Questions by Mr. Bennett:

— Now, Mr. Johnson, the fact about this current is this, is it not: That from the Big Eddy down to the Covington point, the water was apparently quiet and still?

A. Well, that would hardly represent it. It was a stiff current.

Q. But it was a good deal quieter than it was below, wasn't it?

A. No—well, it was quieter than it was below the Three Mile, and then it was rougher than it would be below Three Miles Rapids. At Three Mile rapids it would be rougher, and then after you got from Three Mile rapids it was rougher than it would be from there to The Dalles.

Q. That is, after you got down here below the Three Mile rapids, then the river spread out, and from there down to The Dalles was quiet?

A. Yes, sir.

Q. From Covington point up, it was not as quiet as it was up here, but it was pretty quiet compared with the rapids?

A. Yes, yes. Oh, the rapids—a person could only go through the rapids by keeping close to the shore, and be a pretty good boatman for to make the rapids. You could not do it in all stages of water.

Q. And then it had to be in low water when you could get through there at all, as a matter of fact.

A. Yes, pretty nearly. I never went through when it was extreme water. But I think a person—well, I don't know; I never went through when it was extreme high water.

Q. You never went through, did you, when it was over ten or fifteen feet above low water, as a matter of fact?

A. No, I don't think ever I did. No, I know I didn't either.

Q. No. And from that stage on up to ten feet, up to eight or ten feet or somewhere along there, why, by hugging the shores you could get through there?

A. Yes.

Q. And you could get back up in here below Three Mile Rapids up to this point. On the lower side there is a kind of back-water there, isn't there?

A. Yes, there is two or three little eddies, and then there is points it is a little hard to get around.

Q. I say you can get up from The Dalles up to this point here in most any stage of water until it is covered, can't you?

A. Yes, and even there a person kind of gets a little rowboat, by keeping pretty close to the shore, or taking advantage of little eddies through there, small eddies; they are not very big eddies.

Q. Until you got up to this point?

A. Yes.

Q. Above that, until you get to Covington point, you could not get through there at anything like a high stage of water up stream at all, could you?

640 A. No, I don't think you could; I never did anyway.

Q. There would be great whirlpools going by there, you could look down thirty or forty feet into the water.

A. The only way you could go over would be to hug the shore and keep a little close at any time. That is the only way that ever I could. Oh, you could get down, but coming back, take all advantage you could of the water—

Q. Even at low stage of water, you would have to hug the shore?

A. Yes, that is true.

Q. As a matter of fact, here at Covington point there was a very narrow place before there was any blasting done, where the water sucked through there with a very swift current didn't it?

A. Yes, and one had to be a boatman to get through it.

Q. Even at low water?

A. Yes, that is right.

Q. That was one of the swiftest places on the rapids, wasn't it, right there at that narrow place at Covington point?

A. That was a very swift place. It was a real swift place.

Q. But after you got above Covington point, it was not still of course, but comparatively still to what it was below?

A. Well, a fellow could take advantage of the eddies there.

Q. But you could get through there until the water got pretty high, couldn't you?

A. Yes. I never did go at particularly high water. The only time that ever I went up and down would be simply for the sake of running the boat to go to The Dalles and not take my team, at any time of the year.

641 Q. Now, Mr. Johnson, you say that the fishery in front of the Evans place was the best that you ever saw?

A. Yes, sir.

Q. Now, there were good fisheries up at Wish-ham on the other side, and at Celilo, on both sides, weren't there?

A. Yes, there was.

Q. But this in front of your place was an especially good fishery?

A. It was a dandy.

Q. Now, as a matter of fact, your fishery there was not in the main river at all, was it, at that place?

A. At Three Mile Rapids?

Q. No; at the place in front of your fishery. Wasn't there a channel came in through here back from the river, a channel?

A. No, that was part of the main river. There were the islands between, and there is really two parts of the river when the water as a general thing comes around there all the time, you know. There is a channel comes down through the west side, and one through the—or north and south side.

Q. But the main channel is over here, isn't it?

A. Yes, that is the big channel.

Q. And the small channel is the one that you fished in?

A. Yes.

Q. And that is back here from the main channel about half a mile or more, isn't it?

A. Yes—oh, not probably that far; it is a quarter of a mile, I should say, Judge.

Q. You think a quarter of a mile back from the main channel?

A. Yes. One channel is to the other, as near as that, I should judge.

642 Q. This little channel that comes through here where this good fishery was, there was a little fall there, wasn't there?

A. Yes, quite a little fall.

Q. And a basin right below it?

A. Yes.

Q. And that was where the fishing was?

A. Yes, it was good fishing there.

Q. And you would go out there to dip with the current in that basin where the water was boiling over the fall?

A. Yes.

Q. And where the fish could not see your dip net?

A. That is right.

Q. And you would dip with the current and dip them up?

A. Yes.

Q. That was the kind of water where the good fishing places were for dip net, wasn't it?

A. Yes.

Q. Where there was a little fall and a boiling eddy right below the fall?

A. Yes. That is the only one that ever I fished in.

Q. What say?

A. I say that is certainly the only kind ever I found much. That was the only chance to fish with dip nets.

Q. What?

A. That was the only place to fish with dip nets.

Q. You could not fish with a dip net in anything like still water, because the fish would see the net.

A. Yes, that is so.

Q. Now, Mr. Johnson, you say that you went there to this place in 1879?

A. That is my recollection; yes; it was 1879.

643 Q. You were there part of 1879 and part of 1880?

A. Yes.

Q. And as I understood you, you remember seeing some Indians on this island?

A. Oh, yes. There was some Indians lived there. I have been over there a time or two to get them to help me to work. I know there was some Indians living there.

Q. As a matter of fact there wasn't but two or three Indians living there, Jake Thomas and one or two other Indians, were there?

A. There was only a few. Jake Thomas is the one that I particularly went over there to see. There was two or three other Indians there. There was some other Indians there. I could not tell you how many. There was a few camps and little houses.

Q. And at times you saw them drying a few fish there?

A. Yes.

Q. They did not seem to be doing much, as I understood you.

A. Not a great deal. Oh, you couldn't tell. I was passing by the road, Judge, and couldn't tell. They wasn't doing a great big business, however.

Q. In passing down on the river, do you claim to have seen any Indians fishing there when you was down on the river?

A. Yes, I have seen Indians fishing there.

Q. These same Indians, Jake Thomas and the other one or two Indians that lived there?

A. Yes.

Q. That is all the Indians you claim to have ever seen there?

A. Yes. I have seen very few really fishing.

Q. Now, you say that you recall one Indian that you took to be a Yakima that worked there for you?

644 A. Yes, he worked for us part of two summers.

Q. Was that Jake Andrews?

A. Jake Andrews, yes. And he had another, said to be a brother-

in-law or some relative of his that was camping there with him. They wasn't camped on the island; they was camped in our field.

Q. When you speak of Yakima, you mean an Indian from the other side of the river; he belonged on the other side?

A. The way I knew Jake was Yakima, he always made quite a lot of talk about being Yakima.

Q. Jake did?

A. Yes. He made quite a lot of talk about that.

Q. You don't know. Now, did he claim to be a Yakima or a Wish-ham from over there on the Wish-ham, at the Wish-ham village?

A. Well, I didn't hear the Wish-ham story much then. He never claimed anything to be a Wish-ham Indian at all. He claimed to be a Yakima.

Q. Do you mean to say that Jake Andrews claimed to belong to the original Yakima tribe, or only that he claimed to come from the Yakima Reservation?

A. Well, he claimed to be Yakima. Now, he didn't make any special claims, only he spoke of himself as Yakima. He didn't make any special claims about it. He spoke of it quite often, being a Yakima.

Q. He also claimed to be part Wasco, didn't he?

A. No; I don't know that he ever claimed that. He claimed to be Yakima; that was principally his claim.

Q. When he fished, he fished up there at your fishing place, did he?

645 A. Yes, when he fished during those summers he was working for us.

Q. You never heard of his fishing down at Three Mile Rapids?

A. No, I never did.

Q. Now, as far back as you know, Indians crossed Five Mile, when they crossed it at all, on a bridge, didn't they?

A. Five Mile?

Q. Yes. Five Mile Creek. When they crossed it at all they crossed it on a bridge?

A. Yes. Everybody crossed on a bridge.

Q. Well, that is what I say.

A. Yes, everybody.

Q. And the Indians too?

A. Indians too.

Q. There was a bridge there as far back as you know anything about the river?

A. Yes.

Q. And it was an old bridge when you went there, wasn't it?

A. Yes, it was. There was not a regular wagon road bridge. We crossed the railroad bridge on foot at that time I think, in my recollection.

Q. Well, there was a railroad bridge there?

A. Yes.

Q. And everybody walked across the railroad bridge?

A. Yes. But I think we went with our teams, Judge. There was no bridge at that time, as I recollect.

Q. What is that?

A. I think there was no bridge. We crossed with our teams down through the water. No, I will take that back, I ain't positive about that.

Q. There was a bridge there, as a matter of fact, a wagon road bridge there, when you were there, wasn't there?

646 A. I won't say to that positive.

Q. You could not begin to get across there with a wagon.

A. Oh, yes, I know there was too.

Q. You know? Yes, you could not begin to get across there.

A. Yes, I know there was too. I will take it back.

Q. There was a wagon-road bridge?

A. Yes. That was something I hadn't thought about.

Q. Does that show the character of the bluff at Five Mile Creek?

A. Yes, that is a very good picture of it; a very good picture.

Mr. Bennett: We offer that in evidence.

Court: Is that Crown Point, where Crown Point is now?

Mr. Bennett: No, your Honor, it is not where Crown Point is. It is the mouth of Five Mile Creek, at the cannery.

Mr. Rankin: Well, your Honor, it only shows a very small portion of Five Mile Creek at the cannery. It does not show up above or below there. I think someone who took the photograph ought to be able to identify it. I will object to it.

Mr. Bennett: That is all we happen to have here, of that particular place, but we will add to that at the proper time.

Court: This is Five Mile Creek running through here?

Mr. Bennett: No; this is Five Mile Creek coming right down here, your Honor. Here is the cannery. Here is the river right out here.

Court: That is what I was inquiring about. This is the bluff out here.

Mr. Rankin: The inquiry of the Court I think would be sufficient indication for me to object to it until properly explained by one who took the photograph.

647 A. That would be below the falls, the falls there.

Court: I don't think it is necessary to take the trouble of calling the photographer. You may introduce it if you like.

Marked "Defendant's Exhibit F."

Q. Do you know the place up there that was notorious as the place where Mark Twain fell in the water?

A. No.

Q. You don't know whether that was the fishery in front of your place, or not?

A. That is the general fishery where Mark Twain stories spring from, I guess.

Q. That is notorious up there as the place where that story sprang from?

A. Yes, where Sinnott's stories and such things as that; as one of the many lies that were told about that.

Q. Well, anyway, it is a notorious point there on that account.

Excused.

648 HARRIET GULICK, recalled for the Government.

Direct examination.

Questions by Mr. Rankin:

— You testified the other day that Wah-sucks was the name of the pine tree and that Kum-sucks was the name of the fishing place, as I recall. (If she didn't it is in the testimony.) What is the Indian meaning of Kum-sucks?

A. What we call Kum-sucks in our language, Kum-sucks means what you people would say entrails.

Q. How did it get the name? How did it get that name?

A. It got its name from an Indian fairy story.

Q. Ask her to tell the court that story.

A. The old people tells us about a fairy story, an Indian fairy story. Once upon a time—I don't know hardly how you people would call this person, but in our language we would call
649 it a mask, I suppose you people would call it—oh, it is pretty hard for me to get that now—would be what you would call a figure. Sometimes it is a person and other times it is not a person; this woman could turn herself to most anything. And this figure had a dip-stand made along there about Wish-ham some place. Instead of this dip-stand being right along the edge of the rocks, she had two poles running out in the river, standing over the bank like that (illustrating), and a platform out here away out in the river. And this figure was dipping salmon out there; and here comes a coyote, who was awful hungry, wanted something to eat; and he saw this woman, or figure, or whatever you might call it, dipping out here, and she caught two big salmon and pulled them ashore. And he was standing right there, and he asked this woman to let him have one of those salmon. She says, "No, I can't give you any salmon." She laid them out there on the rocks, and went back again away out on the river, went to dipping; and he got so mad he went to work and took the rocks off these poles from her, and dumped her overboard, and down the river she went—floated down. And when she got down to this place there; why, the current got her and just tore her all to pieces, and her entrails came out. That is where you see that water just turning to every shape. That is the way it got its name.

Q. Has her brother fished there with dip-net after the blasting of the point? Wasco Charley I refer to.

A. I don't remember of seeing him dipping there after this
650 point was blasted out.

Q. Did she understand that this fishing place had been destroyed by the blasting?

A. There is two dipping places there that was not destroyed. There is one there where Peter Johnson run his wheel, and one below the point, along where Sam Williams used to have his wheel.

Q. Well, have all the dipping places there on that point been destroyed, if she knows?

A. No, sir, the dip-stands was not all destroyed when that point was blasted off. Right where, as I said before, where Peter Jackson's wheel runs right there is a dipping place, and below that is where it was blasted out, and down below there, where Sam's wheel is, it was not blasted, and it is all right there sufficient point yet.

Excused.

651 JOSEPH ESTABROOK, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Mr. Estabrook?

A. The Dalles.

Q. Are you going to school now?

A. Yes, sir.

Q. Where?

A. Chemawa.

Q. That is the Chemawa Indian school down at Salem?

A. Yes, sir.

Q. How old are you?

A. 19.

Q. Are you a full blood Indian?

A. Three-quarter blood Indian.

Q. What was your father?

A. Half-breed.

Q. And your mother?

A. Full-blood Indian.

Q. And what tribe was your father a member of? Or what did he have his descent from?

A. Cascade.

Q. Your mother was what tribe?

A. Dalles.

Q. The Dalles. That is sometimes called the Wasco Indians?

A. Wasco.

Q. Are you an allotted Indian, Joe?

A. Yes, sir.

Q. Where are you allotted?

A. Yakima.

Q. On the Yakima Indian Reservation?

A. Yes, sir.

Q. That is in Washington?

A. Yes, sir.

Q. Are you acquainted with Three Mile Rapids?

A. Yes, sir.

Q. Have you ever fished at the head of Three Mile rapids?

A. Yes, sir.

Q. When did you fish there?

A. 1914.

652 Q. How did you fish there?

A. Dip net.

Q. How many days did you fish there at that time?

A. It is all I could remember is about three or four days.

Q. Did you catch fish?

A. Yes, sir.

Q. About how many fish did you catch?

A. Well, I got, it is about 900 pounds.

Q. How did you know where to fish?

A. Because Peter Jackson showed me where.

Q. Peter Jackson showed you where?

A. Yes, sir.

Q. Did you know Wasco Charley?

A. Yes, sir.

Q. Did you ever see him dip there?

A. Yes, sir.

Q. When was it you saw him dip there?

A. Why, I saw him dip there about 1909.

Q. Did you ever see anybody besides Wasco Charley dip there?

A. Alcohol Jim.

Q. Alcohol Jim?

A. Yes.

Q. Did you ever dip there more than one season?

A. Yes.

Q. When was the other season?

A. 1913. The year before that.

Q. Where did you dip?

A. Right by Peter Jackson's wheel.

Court: Peter Jackson's wheel?

A. Yes, sir.

Court: That was just above the point where they blasted off the rocks?

A. Blasted the rocks?

Court: Yes. Do you know where the Government blasted off the rock there at that point?

Mr. Bennett: I think, your Honor, I can clear that point up when it comes to cross-examination.

653 Court: Very well.

Q. How many places did you dip?

A. Two places.

Q. Describe them, as best you can, to the Court.

A. There is one right above Peter Jackson's wheel there, and one below it.

Q. One above Peter Jackson's wheel?

A. Yes.

Q. That is up-stream?

A. Yes.

Q. One below it?

A. One below it.

Court: Below the wheel or below the point?

A. Below the wheel.

Q. Do you know where the blasting occurred?

A. Blasting?

Q. Yes; where the Government blasted off the point of rock?

A. Yes.

Q. Where was that, Joe?

A. It was just a little ways below.

Q. A little ways below?

A. Yes.

Cross-examination.

Questions by Mr. Bennett:

— How long have you been going to school?

A. Just only two weeks and one day from today.

Q. Did you ever go to school before? Any year before this?

A. No, sir.

Q. You have been raised there around The Dalles among the white people; that is, I mean, talking with the white people every day?

A. Yes, sir.

Q. Now, this picture shows the river there as it runs around
654 that point, that island or point, like this, and runs on down towards The Dalles. It is down there. Now, does this look to you like that point? Is that the shape of that point or island as you remember it, where it comes out into the river there, the river running right around here.

A. I don't know anything about map.

Q. You can see it; you know about pictures, don't you?

A. Yes, sir. I know about pictures.

Q. Now, does that look to you like a picture of where the river runs around that island like that, and these rocks here you see below. Could you tell better by this picture or by this one? Here is the point in this picture, the same point, and here it is in this one, after it was blasted off. Now, which one looks to you the most like the point. Which picture?

A. They look all pretty near the same.

Q. Do they look about right to you? You need not be afraid of these pictures, because Mr. Dorrington and Mr. Rankin brought them

here. They are not my pictures, unless it might be that one. These two are not my pictures. Now, do they look about like the point?

A. Yes, sir.

Q. Well, now, this shows where the point was blasted off there. You say you remember that; you remember where they blasted off the point. Now, this back to here shows where they blasted off, where the Government flasted off, blew it off, you know, into the river.

A. Yes, sir.

Q. Now, that is about the way it was, wasn't it, where they
655 blew it off. They blew off about that much, didn't they; that is corresponding with the point here; that looks all right for what they blew off, does it—picture of it?

A. Yes, sir.

Q. Now, then, Peter Jackson's wheel was right up here, wasn't it, or up here somewhere?

A. Yes, sir.

Q. Now is that the place where you fished with dip net?

A. Just a little bit below that.

Q. A little bit below that; down here?

A. Yes, sir.

Q. About how far below Peter Jackson's wheel, about how many feet?

A. Oh, about 30 or 40 feet below.

Q. About 30 or 40 feet below Peter Jackson's wheel?

Examination by the Court:

Q. Did you fish any on the other side of that rock, down where Sam Williams' wheel was?

A. Where is that rock?

Q. Do you know where Sam Williams' wheel was?

A. Yes.

Q. Well, did you fish any down there near his wheel?

A. No.

Q. You didn't?

Redirect examination:

Q. Was any one there with you?

A. Yes, sir.

Q. Who?

A. Jesse Mann.

Excused.

656 JESSE MANN, a witness called on behalf of the Government,
being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Jesse?

A. At The Dalles.

Q. How long have you lived there?

A. Since the summer of 1911.

Q. And how old are you?

A. Let me see. Well, I said the other time I was born 1894, but I found out afterwards I am a little older than that, a little younger than what I thought I was.

Q. All right. About how old?

A. I was 19 last August.

Q. 19 last August?

A. Yes, sir.

Q. Do you know Wasco Charley?

A. I do.

Q. I believe your former testimony shows that you fished out here at the head of Three Mile?

A. Yes, sir.

Q. Did you ever see Wasco Charley dip net fish off that point?

A. I have.

Q. When did you first know that point?

A. In the spring of 1912.

Q. You were not there at the blasting?

A. No, sir.

Q. You have seen Wasco Charley, then, fish at this point after the blasting, with a dip net?

A. Yes, sir.

657 Q. Did you ever see anyone else fish there?

A. Yes.

Q. Who?

A. Joseph Estabrook.

Q. Tell the court when and how you saw Joseph Estabrook fish with a dip net.

A. Well, I seen him fishing there in the latter part of April, 1914, with a dip net.

Q. Just where did he fish?

A. He fished about 35 or 40 feet below Peter Jackson's wheel.

Q. Where was that with respect to where Wasco Charley used to fish?

A. Same place.

Q. Did Estabrook fish at any other place?

A. Why, he fished—there is one dip net place right under Prter's scow. He fished there, but the water got too rough there. It ain't very good.

Q. Estabrook fished how?

- A. Dip net.
Q. Did you know where Wasco Charley fished?
A. Yes, sir.
Q. With dip net?
A. Yes, sir.
Q. When did you see him fish?
A. It was in August, 1912.
Q. Where was that with respect to where Estabrook fished?
A. Same place.
Q. You know Sam Williams, do you?
A. Yes, sir.
Q. When did you first know Sam Williams?
A. Spring of 1912.
Q. Was he fishing then, or not?
A. Yes, sir, he was fishing.
Q. How did he fish?
658 A. Fished with scow wheel.
Q. Whereabouts?
A. When I first seen him, he fished on the Washington side.
Q. And where later?
A. On the point at Three Mile Rapids.
Q. On the same side and same locality, or different side and different locality, with respect to where you saw the dip net fishing?
A. Why, it is below.
Q. Which is below?
A. His scow wheel fishing below where they dip net.
Q. Did you see him fish the next year?
A. 1913?
Q. Yes.
A. Yes, sir.
Q. Whereabouts then?
A. In the same place.
Q. Now, how did you fasten the scow to the—I believe you testified in your other examination that you helped Sam to put his scow there?
A. 1913?
Q. 1912, I believe, was it?
A. No.
Q. Which year was it? I don't know.
A. I never helped Sam to put his scow in there.
Q. Oh, you haven't. All right then. Have you been up there when the scow has been tied to the bank?
A. Yes, sir.
Q. How was it tied?
A. Tied with cable.
Q. To what?
A. Oh, rocks. There was in 19—; well, in 1913 he had some pins there.
659 Q. How did those pins get in there?
A. I put them in.

Q. How many pins did you put in?

A. I put in five.

Q. Whereabouts?

A. Well, there is one for the head line, and one for the front side, and the stern side, and there is a stern line.

Q. Were those all put in by yourself?

A. Yes, sir.

Q. Who helped you?

A. Winnie Thomas; and one of them, Joseph Estabrook helped me put it in.

Q. Were there other pins there?

A. There is one.

Q. What was that pin?

A. They have often told me it was a Government pin.

Q. You don't know whether it was, or not?

A. No.

Cross-examination.

Questions by Mr. Bennett:

— Where were you born?

A. Leroy, Michigan.

Q. I believe you stated that you were full-blood white?

A. Yes, sir.

Q. Now, at the time that you were doing this fishing there on the point, where were you living?

A. Sam Williams.

Mr. Rankin: That has all been testified to in his preliminary examination.

Mr. Bennett: I don't know whether it has, or not. I am not so sure that it has.

Q. You were living there on the island with the Indians?

A. Yes, sir.

Q. How long did you live there with them?

660 A. I lived there—well, not all the time. I lived with Haskin when I first, in the first part of 1912.

Q. Lived where?

A. With Haskin; A. A. Haskin.

Q. Is that an Indian?

A. No, sir. He is part Indian, yes.

Q. How long were you living there with the Indians?

A. I lived there since the 28th of July, 1913.

Q. Are you living there yet with them?

A. No, sir.

Q. When did you quit living there?

A. Along in November.

Excused.

661 JIM JACKSON, a witness called on behalf of the Government, being first duly sworn, testified as follows:
Charley Pitt, Interpreter.

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Mr. Jackson?

A. Warm Springs agency.

Q. How long have you lived there?

A. I hardly know. I lived quite a few years at The Dalles, up there, and I have lived most of my time at the agency. I have lived both places.

Q. Are you a full-blood Indian?

A. He says, as far as I know, that my mother was a Wasco and my father was called to be a Warm Spring. Of course, I don't know any more than what I have heard.

Q. Is there any white blood in him?

A. Well, that is the name I have now, that I have white blood in me. Of course I can't contradict that, because I don't know.

Q. Now, where did he live when he lived down near The Dalles?

A. I lived at Three Mile the time that I worked at the slaughter-house.

Q. Did he ever live in The Dalles?

A. No, not in The Dalles.

Q. Did he live all the time at Three Mile?

A. I lived when I was a small boy there, and I lived there also at Three Mile after I got to be a grown-up man; I lived there
662 around the Three Mile there, by Wah-sucks there, different places around there.

Q. Do you know whether or not Wah-sucks was a fishing place for Indians?

A. He says I do. I know where Kum-sucks is, and the particular place where they catch fish, in early fishing time.

Q. Was it valuable for early fishing?

A. It is valuable on account of being early fishing point.

Q. What Indian tribes have you seen fish at Kum-sucks?

A. He says there was parties lived there pretty steady, more so than all the rest of the Indians; and that is Chapmant, and Wasco Charley, and Sam Williams and his wife, and old man Smiock, lame fellow, they lived there pretty steady. Those lived there pretty steady around Wah-sucks, but there was other Indians from the other side came and stayed there only at fishing season, from the other side.

Q. Does he know Alcohol Jim, as they call him?

A. Yes; he said the Indian we call Sho-Whocht.

Mr. Bennett: He means that is the Indian name of Alcohol Jim.

Mr. Rankin: He asked me if I knew him by name of Sho-Whocht. That is the Indian I referred to.

Q. These Indians that came from the other side, where did they come from?

A. Some from Wish-ham. They fish on this side, and some comes from Simcoe to fish there also; Yakima.

Q. When does he first remember Three Mile Rapids—about what year, if he can tell.

663 A. I said I lived at Three Mile from a small child up; and I remember that place ever since a small boy.

Q. About how old is he?

A. Well, he says, that I can't tell you the exact years, but then, he says, I was big enough to remember.

Q. About how old is he now, if he knows?

A. He says I know nothing only what I was told by neighbors, that I was about 60.

Q. Now, what was the relation, as to whether friendship existed or enmity existed, between the tribes on the south side and the tribes on the north side of the river?

A. I have never known anything in my time—now, I speak of my own time—I never knew anything only friendship with the tribe from the other side of the river. They marred over, my own folks married over on our side married the women on our side, and they were married each way. All my time there never was any trouble or row among them.

Court: Judge, do you deny that the Indians were friendly?

Mr. Bennett: Well, I think, your Honor, that they have been friendly since 1858. And I think at times, perhaps most of the time, they were friendly before that. But historically they were not always friendly.

664 Q. How did those from the north side get down to Wah-sucks to fish?

A. He says there was a landing point very near opposite of Kum-sucks on the other side. And there is enough soil where trails could be made, and they had little trails to get to the bank of the river into the canoe to cross.

Q. Were there other places where the tribes from the north side crossed?

A. He says yes, there is other places above Kum-sucks to cross.

Q. How far above Kum-sucks?

A. I can't tell exactly how far this crossing place is above Kum-sucks, but there is one place above where I have crossed, and the other Indians have crossed. Close to this second crossing place there is a fishing point, too.

Q. Where, with respect to the cannery? I thought he said cannery.

A. There is one crossing at Til-mich-tich; then a little further above, a little bit above the cannery there is another crossing place.

Q. Did he see Yakima Indians crossing there, and Wish-ham Indians?

A. Yes.

Q. When did he last see Kum-sucks?

665 A. Something like two or three years since I have seen it, I have not fished any more.

Q. Does he know Sam Williams?

A. Yes.

Q. Does he know Peter Jackson?

A. Yes.

Q. What relation is Peter Jackson to him?

A. My son.

Q. When did he first see Sam Williams fish there?

A. As near as I can remember; it was right at Kum-sucks when I first saw him fish.

Q. When? How long ago, first?

A. He says, you have got me now. I can't remember the years. My memory is not good.

Q. Was it long ago, or a short time ago?

A. Well, he says it has been quite a while ago; not so very long, either, but it has been a good while ago.

Q. How was he fishing?

A. With a dip net; that was his first fishing, was with a dip net.

Q. Ask him if he was living there back of Kum-sucks when the high water came.

A. Yes.

Q. Did he see Sam fishing before the high water time or after the high water time?

A. Sam has fished generally during the high waters where he fished; and different times he fished with nets after high water.

Q. After high water?

A. Yes.

Q. Did he ever see Sam fish any other way than by nets?

A. No. He says that Sam Williams has caught salmon there where I stated with the nets; and then I have seen him catch
666 fish any other way. There is other places above where Indians spear salmon, further up, away up above.

Q. He has never seen Sam fish with scow fish wheel?

A. Yes, I have seen Sam and Peter Jackson fishing with a scow wheel at Kum-sucks.

Q. Partners?

A. Yes.

Q. Did he see Sam fish any time after Peter Jackson and he were partners?

A. All I know that I heard that Sam Williams and Peter Jackson had broke up in the partnership with this wheel, but Sam continued fishing afterwards.

Mr. Bennett: I do not think that is proper.

Mr. Rankin: Well, I don't care about it if it is hearsay.

Q. Have you been up and down the river in a boat; from The Dalles up the river in a boat?

A. I have gone from The Dalles up to, clear up to Nuchtas, at certain times of the season when the water was in the right direction.

Cross-examination.

Questions by Mr. Bennett:

Q. Ask him to state again what tribe his mother belonged to?

A. Wasco.

Q. Ask him if his father was a white man.

A. He says, I don't know anything about the white man being my father, as I said before. I don't know nothing about it, only that when I was a child my parents—were supposed to be my parents—they were both Indians.

Q. Ask him what tribe the man he supposed to be his
667 father belonged to.

A. He talked the Warm Spring language. His name was Shubelish.

Q. Ask him if he can talk English.

A. Yes, he says, simple words.

Q. Tell him to talk English to me. I want to talk English to him. Did you live at The Dalles before you went to work for Mr. Jackson at the slaughter-house?

Interpreter: He says he would rather talk through me.

Q. Says what?

Interpreter: He would rather talk through me. I might make a mistake and misunderstand his questions; and he may misunderstand me.

Q. You tell him I can understand him better if he talks with me.

A. He says, I am an Indian, brought up as an Indian. He says, here is an interpreter; he has known me from childhood up as an Indian; and I can't read; I never went to school; and I have not been among the whites long enough to know much about English.

Q. Did you talk white man's talk to Mr. Jackson when you worked at the slaughter-house?

Court: Jackson, you answer him direct.

Interpreter: What about Jackson?

Court: I say, you answer Judge Bennett. You talk to him.

A. He says he don't feel safe talking with the gentleman.

Court: You tell him that it is the order of the court that he talk to him in English.

668 Mr. Bennett: I think I won't insist upon it, your Honor, if he don't want to talk English.

Court: It is all right then. Go ahead.

Mr. Bennett: It will be the shortest way, to go ahead the other way.

Q. Ask him how long he worked for Mr. Jackson at the slaughter-house.

A. I don't know how many years I worked for him, but then I worked a long while for him.

Q. Ask him if he worked five or six years for him.

A. Longer.

Q. Longer than five or six years?

A. A little longer, yes.

Q. Ask him if he talked English to Mr. Jackson, white man's talk to Mr. Jackson.

A. That is the trouble. Jackson talked to him only in Chinook, and I talked Chinook with him; didn't give me a chance to learn anything. Jargon is what we used when I was with him.

Q. Ask him if he worked at The Dalles before he went to work for Mr. Jackson.

A. I didn't live down there at the town, the city of The Dalles, but I lived up on Three Mile, above The Dalles.

Q. On the road from The Dalles to the Warm Springs. Ask him if he lived on the road from The Dalles to the Warm Springs.

A. No, he says, not on the road, but I lived down towards the river; pretty well towards the river from the road.

Q. What say?

669 A. He lived down towards the river from the road. Oh, he says that he lived at Jackson's slaughter-house on Three Mile, if you know where that is.

Q. Where the wagon-road crosses Three Mile?

A. He says he lived down on Seufert's side, down towards Seufert's claim, further down, not near the road, on top of the bluff. He was not living anywhere around there. He lived below.

Q. What is that?

A. He lived over on Mr. Seufert's ranch, down that way, off the road. It was on Three Mile.

Q. Ask him how far from the road.

A. Which road?

Q. Ask him how far he lived from the road that goes from The Dalles up to Seufert's cannery.

A. He says, I lived about 500 steps, perhaps, from Mr. Seufert's road, and about one hundred yards from the railroad tracks in towards the river.

Q. Ask him if he lived on the island, or between the sloughs and the railroad track.

A. He says, yes, I lived across the slough, the slough next to the island. My mother—

Q. Ask him if he lived between the slough and the railroad track.

A. No, we lived on the north side of that river, that dry channel that goes through there. In high waters it fills up. I lived on the island side, next to the river.

Q. Ask him if he lived there when he was working for J. H. Jackson, on that side.

A. No, not at that place that I have described to you; but
670 I lived in another place where Mr. Jackson put me up a little shack; I lived there to another place.

Q. Ask him how close that was to the road, the wagon road.

A. One of the roads, I should judge it was about 50 steps from my shack where I was; but there has been other roads put in since Mr. Seufert made a new road; but where I lived to the certain road something like 50 steps from where I lived.

Q. Ask him if when he first saw Sam Williams fishing at the

point, Kum-sucks, if Sam Williams was fishing with a gill net, a long gill net.

A. I have seen Sam Williams fish with a gill net during the high waters, but before he fished with net, as about all he could afford was a dip net at first.

Q. What say?

A. I say, that was about all he could afford, dip net, when he first started in fishing. He fished with a dip net, and then afterwards he had a gill net when the water was up.

Q. Ask him whereabouts that was that he saw him fishing with a dip net, or claims to have seen him fishing with a dip net.

A. At Kum-sucks.

Q. Ask him how long ago he claims that was, that he first saw Williams fishing with a dip net at Kum-sucks.

A. He says I don't remember of times at all.

Q. Ask him if that was before he worked for Jackson.

A. No, I was working for Jackson before Sam Williams was fishing there.

671 Q. Ask him how long after he quit working for Jackson before he claims to have seen Sam Williams fishing there with a dip net.

A. He says it is a puzzle to me to know the years, but he never came there to fish, this Sam Williams never came there to fish till away after I quit from Jackson's, but I don't know how many years—really don't know how many years ago.

Q. Ask him if it was as much as ten or fifteen years after he quit fishing for Jackson before he saw Sam Williams fishing there.

A. He says, I don't know; have no idea. No, I don't know.

Q. Ask him how long after he quit working for Jackson he went out to the Warm Springs.

A. He says I didn't go to the Warm Springs right away after I quit. I stayed at The Dalles quite a long while afterwards, and after I quit working for Jackson before I went to the Warm Springs.

Q. Ask him about how many years he stayed at The Dalles before he went out to the Warm Springs, after he quit working for Jackson.

A. No. It is useless to ask me anything about time.

Q. Ask him if it was 8 or 10 years.

A. I don't know that either.

Q. Ask him if he claims to have seen Sam Williams fishing there with a dip net, before the big high water.

A. I stated that Sam Williams was fishing at high water with dip net. That is the only time that that place can be fished, at high water.

Q. Yes. But I mean the big high water. Ask him if he saw Sam Williams fishing there before the big high water in 1894. You remember that. Explain that to him.

A. He says, that the way you speak of it, that at that time nobody fished at the high water because it overflowed every place.

Q. But ask him if he saw Sam Williams fishing there before that, before that time.

A. Well, he says, I don't know. I don't know when I seen Sam

Williams, whether it was after the high water or before the high water. You have got me there. I can't say.

Q. Ask him if Kum-sucks was a place where the Indians could only fish at high water.

A. My people in my time has fished at Kum-sucks at high water; people before me, as I have always heard that Indians before me had fished there at high water. Kum-sucks.

Q. Ask him why they didn't fish there at low water. Ask him if it was because the bluffs were too high.

A. The water changed; it filled the different points, the fishing points. Sometimes if it goes down, why, they can fish, come to a certain point they can fish at the low water; and sometimes if the water comes up, if it fits certain fishing points they can fish there. It all depends how the river would be.

Q. Yes. But I am asking him why they could not fish at this point at low water, if it was because the bluffs were too high, the rocks too high.

A. Well, at this bluff that you speak of, we have got to wait till the water comes up to a certain stage before they can fish at this bluff here. But if it falls, why we can't fish there. It gets too low.

673 Q. Then they could not fish on that point at low water?

A. No; we can't fish any more. It is a solid rock all the way down to the bottom. We don't fish there any more.

Q. Ask him if they ever could fish there at low water. Ask him if they ever could fish there when the water was low.

A. I never knew of any other fishing point at this bluff here when the water fell, in its low stage. I don't remember of any other fishing point.

Q. Ask him if this crossing at Kum-sucks was just below the rapids.

A. Yes; right below.

Q. Ask him if Peter Jackson, his son, married Sam Williams' daughter.

A. Sam Williams' step-daughter.

Q. Married his step-daughter?

A. Yes.

Redirect examination:

Q. What do you mean by high water?

A. Well, I mean high water when it come up to the bank. It is higher than any other time, high water.

Q. Does he know the point of rock out in the river beyond Wah-sucks, clear out to the point?

A. Yes.

Q. Does water ever run over that at high water?

A. When high water comes, why it covers the rocks; the river is all one.

Q. Do they fish there then?

A. No. No, they can't fish there.

Q. Now, Judge Bennett asked him if they fished there at high water. He says the rocks are under water. Ask him to explain what he means.

A. There is only one place at this bluff that I mention. If the water comes clear up to that certain place, fishing place, that is where I meant that we fish at that bluff there; not out into the river, but here at this bluff there.

Excused.

675 SAM-TAN-A-WASHA, a witness called on behalf of the Government, being first duly sworn, testified as follows. Louie Brown, Interpreter.

Direct examination.

Questions by Mr. Rankin:

— Where do you live?

A. I live at Yakima at the present time.

Q. Where were you born?

A. I was born at Wish-ham.

Q. What were your parents? What tribes did your parents belong to?

A. My mother was a Wish-ham tribe; my father was a Klickitat.

Q. Are you acquainted with Three Mile Rapids above The Dalles?

Interpreter: I don't think he knows what Three Mile Rapids is.

Q. Well, you make him understand what I mean by Three Mile Rapids; whatever it is; Wah-sucks or Kum-sucks, or whatever it is.

A. Yes, I know where that is.

Q. Is that above or below Mr. Seufert's cannery?

A. Below.

Q. Has he ever seen Indians fishing there?

A. Yes, sir.

Q. From where did those Indians come, if he knows.

A. I have seen people fish there from Wasco; some from Wish-ham; and some from Yakima, and other places.

Q. How did he happen to see them fish there?

A. I was raised right there, and saw them fish there.

Q. Did you ever fish there?

A. Yes, sir.

676 Q. How old are you?

A. I am about 53 or 54.

Q. Are you allotted on a reservation?

A. Yes.

Q. Where?

A. I am allotted a place called White Swan, near White Swan.

Q. That is on the Washington side of the Columbia River?

A. Yes, it is on the other side; on the Washington side.

Q. Name some of the Indians from the north side among the confederated tribes of the Yakima that he has seen fish at Wah-sucks or Kum-sucks.

A. I have seen quite a good many of those people from the other

side; one man by name of Ye-yowan, and one man by name of Louis Simpson, and one man by name of Seelatsee.

Q. Did he ever see any Indians from the south side fish there, Oregon side?

A. Yes, sir.

Q. Who?

A. This man I seen fish there, Pulash. He is known as Wasco Charley.

Q. Who else?

A. Another man by name of Smioke; another man by name of Slelam.

Q. What is Slelam's English name?

A. I don't know his English name.

Q. All right. Were there many others that fished there or not?

A. There is another man that he just called with this Slelam, by name of Hun-eksha.

Q. Were there many fished there, or not?

A. Yes, there is quite a good many others that fished there.

Q. Did they have any trouble about fishing there, or did
677 they all fish as of right?

A. I never seen them have any trouble or heard of any trouble.

Q. Did they come there every year, or not?

A. Yes, sir; they used to fish there all the time.

Q. Where did those that came from the north side of the river, Washington side, where did they cross the river?

A. One crossing was there by Kum-sucks, and another one at Til-mich-tich.

Q. Were there other crossings above Til-mich-tich?

A. Yes, sir.

Q. Where?

A. There is another crossing just above the mouth of the creek, where the cannery is.

Q. Where else?

A. There is another crossing away up above the narrows.

Q. Did he ever cross at any of these crossings?

A. Yes, I have crossed there many a time.

Q. What crossing did you cross at?

A. I have crossed at all these crossings that I mentioned.

Q. When did you cross there?

A. Ever since I was about 12 or 14 years old.

Q. Did you cross many times during those years, or just a few times?

A. I have crossed there right along when I come from the Yakima. I know these crossings. I can go right there and cross them again.

Q. How did they cross?

Court: They crossed in a skiff, of course. I don't think it is necessary to inquire about that.

678 Q. How did they fish at Wah-sucks?

A. With a dip net.

Q. Why did they go to Wah-sucks to fish?

A. It is because it is early fishing place.

Q. How long would they stay at Wah-sucks when they went there?

A. That just depends on the freshet of the river. If it raises right fast, why, people didn't fish there so long. But if it didn't raise quite so fast, they would fish there quite a while.

Q. Does he know Sam Williams?

A. Yes, sir. I know Sam Williams.

Q. How long have you known him?

A. I have known Sam Williams about 20 years, I should judge.

Q. Did you ever see Sam Williams fish at Wah-sucks?

A. Yes.

Q. How long ago have you seen Sam Williams fish there at Wah-sucks or Kum-sucks?

A. When I first got acquainted with him, about 20 years, is when I saw him fishing.

Q. How was he fishing then?

A. He was fishing with a dip net at that time.

Q. Has he seen Sam Williams fish there later years?

A. Yes, sir.

Q. How was he fishing then?

A. The last time I saw Sam fish there was with a wheel.

Recess until 2 P. M.

679 Court: Mr. Rankin, in this case you have called quite a number of witnesses who have testified very nearly alike on certain points. For instance: They have testified as to the crossings, the Indian crossings there. One point is below Kum-sucks and another point immediately above, and another point at Til-mich-tich. Then there are two points of landing above Seufert's.

Mr. Rankin: I believe Til-mich-tich is just above Seufert's. There are two more Memaloose Islands, I believe, at the Big Eddy.

Court: Well, those crossings from the north bank come in beyond Big Eddy first, and then below that is a crossing, just below the point of rocks that runs out into the river. And that is where they crossed the horses.

Mr. Rankin: Yes.

Court: And then farther down, it is not very clear, from the other bank, where they entered the river; but when you come down nearly opposite the Kum-sucks there are one or two points there pretty definitely fixed. And then, furthermore, the manner of crossing from the other shore to the Oregon shore. Those things are pretty definitely substantiated by the testimony so far, which has been largely cumulative.

Mr. Rankin: Yes.

Court: Furthermore, the point where they fished has been very definitely fixed, also, by cumulation of evidence, and I think it will be sufficient from this time on and until the matter has been contradicted, to a large extent at least, to confine yourself to the point where the fishing was done and the manner in which the fishing was operated from that point.

680 Mr. Rankin: Very well.

Court: And the class of Indians who came from the opposite shore to fish.

Mr. Rankin: Yes, your Honor. I had planned during the noon hour that that would be my program, and I shall adhere to it.

Court: I don't think we better take up any more time with the other matters. I imagine it would be largely admitted by the other side, but I cannot say. Of course, they will have their opportunity to manage that as they see fit.

Mr. Rankin: I had one more witness to call on going through the rapids.

Court: There is another point, Mr. Rankin, that would be cumulative evidence, and that is the relation of the Indians.

Mr. Rankin: There is only one suggestion I would make in that respect, your Honor. Old Wallulatum—I don't know how old he is; the report is that he is 103; but with the permission of the court I would like to ask him if within his recollection.

Court: Very well.

Mr. Rankin: And one other witness who is spoken of in Lyman's "The Columbia River". Tullux Holiquilla, famous in the Modoc wars as scout for the United States troops. He was quite a noted character and has been recognized in history. I would like to ask him. With that exception I would not ask any more courtesy of the Court.

Court: Very well.

681 SAN-TAM-A-WASHA resumes the stand.

Cross-examination.

Questions by Mr. Bennett:

— He says that his father was a Klickitat and his mother a Wishham. Ask him where he was raised, by his father or his mother.

A. My mother raised me.

Q. Ask him if the country of the Klickitats was over on the Klickitat River and about the foot of Mt. Adams.

A. Klickitat tribe lives at Lyle; place called Lyle.

Q. Well, ask him if their country didn't go up the Klickitat River and up about the foot of Mt. Adams, too, from Lyle up.

A. Only right along by Lyle is what they call Klickitat; but that other what you have reference to is the Klickitat River.

Q. Ask him if the crossing that he speaks of down at Kum-sucks was just below in the still water at the foot of the rapids.

A. There is one crossing right at Kum-sucks and one above.

Q. Ask him if the crossing at Kum-sucks wasn't at the foot of the rapids just below.

A. Just along above the Kum-sucks.

Q. Ask him if there was a crossing just below Kum-sucks.

A. Yes, there is other crossing away down below, along below that.

Q. How many miles below?

A. I don't know anything about miles, but it is just along below that Kum-sucks there is other crossings.

682 Q. Ask him if he doesn't know how much a mile is.

A. I don't know anything about miles.

Q. Ask him if this crossing below is half-way down to The Dalles.

A. No, it is nearer to Kum-sucks than it is to The Dalles.

Q. Ask him how long ago it was he claims to have first seen Sam Williams fishing at Three Mile point.

A. About 20 years ago.

Q. Ask him if it was before or after the big high water that he first saw him fishing there.

A. Well, it was along about that time of the year, during the high water. I just could not say.

Q. Ask him how Sam Williams was fishing there at that time.

A. With a dip net.

Redirect examination:

Q. The crossing at Kum-sucks that he testified, just above Kum-sucks, whereabouts on the Oregon shore did that leave?

A. The first crossing that I had reference to, just a little above Kum-sucks is Chul-at-Kleet; that is that Chul-at-Kleet below this Til-mich-tich.

Q. Below Til-mich-tich. Is that the first crossing above Kum-sucks, this Chul-at-Kleet?

A. Yes. Here is Kum-sucks, and here is Chul-at-Kleet, and here is Til-mich-tich. The first crossing is Chul-at-Kleet.

Q. Now, where did Chul-at-Kleet leave the Washington shore, whereabouts? Locate it for us. Tell us where on the shore it was.

A. That is only way that I can explain it to you; that this landing was Chul-at-Kleet on the Washington side, and that is
683 all. I don't know anything about anything above or below.

Q. Ask him if he knows or remembers the big bluff of rocks a little above Kum-sucks on the Washington side of the river below Seufert's cannery?

A. There is one bluff there, this Wa-ki-muck, there is a bluff of rocks there that is above this Chul-at-Kleet crossing.

Q. Up above on the river?

A. Up above on the upper side above this crossing here.

Q. But what kind of a beach was at the Washington side of Chul-at-Kleet?

A. There is a sand bank right down next to the river there.

Q. Does he know what white men call that place?

A. No, sir. I don't know what they call it.

Q. Does he know where Jake Andrews' wheel was in September, 1914.

Interpreter: On the Washington side?

Q. Yes, on the Washington side.

A. I know it was running at two places; one place at Cow-wa-shela, and the other place at Wa-ki-muck.

Q. Did he ever see it on this sand beach that he speaks of at the crossing, Chul-at-Kleet?

A. I have seen that scow there in the winter-time.

Q. Is that the Washington side of Chul-at-Kleet crossing, is that where he means at the crossing at Chul-at-Kleet, is that where they landed when they crossed to Wah-sucks or Kum-sucks?

A. Yes, sir.

Q. Now, the next crossing above there. Ask him if he
684 knows where Covington Point or Covington place is.

A. No, I don't know where Covington place was, he says, unless it is at that place there where they call Til-mich-tich. That might be Covington place. I have seen white people living there, but I don't know who they were.

Excused.

685 L. A. SCHANNO, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— You are from The Dalles?

A. Yes, sir.

Q. You are down here on the United States grand jury?

A. Yes, sir.

Q. Have you ever been up through Three Mile Rapids?

A. Yes, sir.

Q. How?

A. With a row-boat and a launch.

Q. When you went with a launch who was with you?

A. Judge Bennett and myself and Nick Sinnott.

Q. That is the Judge here?

A. Yes, sir.

Q. When you went up with a row-boat who was with you?

A. Nick and Roger Sinnott.

Cross-examination.

Questions by Mr. Bennett:

— Leo, when you went up through there—you have been up through there lots of times, haven't you, part way through the rapids?

A. Well, I have been part way through lots of times, not all the way through.

Q. You have been up Three Mile Rapids, haven't you, lots of times?

A. Yes, sir.

Q. Did you ever see any Indians fishing along there on Three Mile Point?

686 Mr. Rankin: Objected to as not proper cross-examination.

The Court: That is not cross-examination.

Mr. Bennett: It seems to me, your Honor, that is a pretty strict rule.

Court: If you want to call him as your own witness, you can do so, but it is not cross-examination.

Mr. Bennett: Haven't I a right to ask him what he saw on those trips that they have had him tell about?

Court: He has only testified in very small compass. He went up there on a boat and certain parties were with him. He has gone up with a row-boat to a certain point. That is all there is to it. I don't see any use of going outside of that for the present.

Mr. Bennett: I think I will offer to show by the answer of this witness that he never has seen any Indians fish at that point on any of these trips.

Court: Well, if you want to show that you can call him as your witness. It is not cross-examination. I think that would shorten the matter up very much, by taking that course.

Mr. Bennett: I will take an exception to your Honor's ruling.

Court: Very well, you may have your exception:

Q. Now, Leo, at these times when we went up the river with a launch we never got above Three Mile Point, except with the big launch that I used to have, did we?

A. It was the large launch, yes sir.

Q. It was the large launch?

A. It was not a little one.

Q. That had a speed of about eleven miles an hour, didn't it?

687 A. Yes, sir.

Q. And it was just about all we could do to get through there at a moderate stage of water, wasn't it?

A. It was about all we could do, yes.

Q. Sometimes the boat would hang for four or five minutes at a time?

A. Yes.

Q. And we had to hug the shores and take advantage of all the eddies to get through that way?

A. Yes, sir.

Q. Now, you never went up through there in a row-boat except at extremely low water, did you?

A. Well, it was in the fall of the year. I suppose the river was very low. There were two sets of oars, I know. Nick and I were rowing, and Roger was doing the steering. And we were, as you say, going as close to the edges as we could and dodging around swift points.

Q. The river gets lower at the fall and in the frozen weather in the winter than at any other time, doesn't it?

A. Yes.

Q. So at this time you were going up through there was probably extreme low water?

A. I should judge so.

Q. Then you had some trouble to get up through there, didn't you?

A. It kept us rowing all the time, I know that. It kept us busy.

Q. You had to hug the shores and take advantage of the eddies?

A. Yes, sir.

688 Court: Was that launch Judge Bennett's private yacht?

A. It was a private launch, yes.

Redirect examination:

Q. How long was it?

A. Oh, about thirty feet, wasn't it; or was it quite thirty feet?

Mr. Bennett: He won't let me say.

Mr. Rankin: We will call the Judge, and ask him about that, Mr. Schanno.

Excused.

689 JERRY BRUNO, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Jerry?

A. Warm Springs.

Q. How old are you?

A. 37; about 37.

Q. Are you acquainted with the head of Three Mile Rapids?

A. Yes.

Q. Do you know what that point is called by the Indians?

A. Kum-sucks.

Q. When do you first remember the fishing on that point?

A. Ever since about 1890.

Q. 1890?

A. Yes, sir.

Q. Did you ever see any Indians from the north side fishing there?

A. Yes, sir.

Q. What Indians do you recall having fished there?

A. Yakima Indians.

Q. What were their names?

A. George Watters, Charley Dick and Charley Winnier; and there is several others that I have known that is from Yakima. There is some strangers that I don't know; I don't know their names.

Q. You know Sam Williams?

A. Yes.

Q. Have they fished there in recent years as much as they did formerly?

A. Yes.

690 Q. Do you understand my question? Are there as many fishing there now as used to fish a long while ago?

A. No, not so many now.

Q. Why is that?

A. Why, the way I understand—they always told me that the place was fenced up.

Q. Well, outside of that, what have you observed of your own knowledge?

A. Well, of course, that was told to me.

Q. What have you seen in the way of interfering there? Anything, and if so, what? Do you understand what I mean by interfering?

A. No.

Q. You said they didn't fish there as much as they used to. Now, why don't they? That is what I mean by interference. Why don't they go in there and fish just like they used to?

A. Well, I have heard them tell me they were not allowed in there.

Q. Who did they tell wouldn't allow them?

A. Seufert wouldn't allow them.

Q. Was there any other stoppage of fishing in there that you know of?

A. That is about all I know of.

Q. How did the Indians go there? I am speaking now of late years, not the old times. Did they go on foot?

A. They come on horseback.

Q. What did they do with their horses?

A. Why, they used to have their horses there when it was open, but afterwards I understood it was fenced up and they weren't allowed to have their horses roam around in there.

691 Q. Where is Kum-sucks?

A. Kum-sucks?

Q. Yes.

A. It is on the point where Sam Williams' fishing point is.

Q. Are there places there to fish?

A. Yes.

Q. If so, how many?

A. There is one that I know. That is the name of Kum-sucks.

Q. Is there any other place?

A. There is another one above there.

Q. What is the name of that?

A. I don't know the name of that one.

Q. How have you seen Indians fish there?

A. I have seen them fish with dip nets and fish wheel.

Q. When did you see fish wheel?

A. I seen fish wheel there some time ago, about—well, I could not tell. There is a white man had his wheel there one time.

Q. Was that right on the point or out on the rocks in the river?

- A. It was right on the point where it is blasted.
Q. That is blasted off now?
A. Yes.
Q. Who was that white man?
A. The way I understand his name was Davis.
Q. You don't know when that was, what year?
A. No, I don't remember when that was.
Q. Did you ever see any other scows, fish wheels there?
A. Yes.
Q. Whose?
A. There was Cain Brunos I know had one in there.
Q. What relation is he to you?
A. He is my brother.
692 Q. Do you know what time he had his in there?
A. About 1908; spring of 1908.
Court: Where did he have his scow located?
A. He had it where Sam Williams had his wheel.
Court: Right below the point of rock?
A. Right there to Kum-sucks.
Court: Right at Kum-sucks where it is now blasted off?
A. No.
Court: Just below?
A. Just where Sam Williams is now, not where it was blasted off.
Court: How far below Sam Williams' wheel?
A. That is right there where Sam Williams had it, right on that Kum-sucks.
Q. Did Wasco Indians fish there?
A. Yes, sir.
Q. How was that? Was that free to all, or did just certain Indians have a right to fish there?
A. That was free for all.
Q. When they fished on that point with dip nets, where did they stay, the Indians?
A. They stayed right there at Wah-sucks.
Q. Where did they camp, whereabouts?
A. Right along where there was a village there.
Q. What was the village called?
A. That was Wah-sucks village.
Q. Was that there all the year around, or just during the fishing season?
A. It was there fishing season, and as I understand it that was long ago there year around, but few years ago there has been some living there.
693 Q. What time was Wah-sucks good for fishing?
A. Early in the spring.
Q. How long?
A. Till the high water; till it covers that.

Cross-examination.

Questions by Mr. Bennett:

— About what month would the fishing commence there?

A. It starts in as early as in March.

Q. How long do you claim it lasted?

A. Till the water is over it, over the whole——

Q. When would that be?

A. That is some time in June.

Q. Now, as I understand you, there were two fishing places there in the vicinity of that point, near that point, one above the other. How far apart were they?

A. Well, I don't know about the distance between them two. I never did measure them places.

Q. Well, about how far apart, as near as you could tell?

A. Why, it is about two or three hundred feet, I suppose. It ain't so very far.

Q. Some three or four hundred feet.

Mr. Rankin: Two or three hundred feet.

A. Two or three hundred feet.

Q. You say there are not so many fishing there now. When did the fishing drop off so that there were not so many, about how long ago?

A. Well, that was about 2 or 3 years ago; two years ago, something along in there. Some years I have not been in there.

694 Q. Then you didn't see any difference in the fishing up to 2 or 3 years ago; just about the same up to two or three years ago?

A. Well, it is two or three yeras ago that I don't go down there to fish. I go some years, and some years I don't. But some years I don't see as many, see around in them fishery.

Q. Some what?

A. Some years that I don't see as many as other years.

Q. Was it about two or three years ago that you first noticed the difference?

A. Well, yes, the time I understood the place was fenced up, and that is the time I didn't see so many around in there.

Q. And that was about two or three years ago?

A. Yes, somewheres along in there.

Q. That was the first that you had noticed any difference?

A. Yes.

Q. Are you a full-blood Indian?

A. Yes, sir.

Q. As I understand, you claim to remember back to 1890. Is that right? Or did I misunderstand you? Did you claim to remember back to about 1890 about the fishing?

A. Yes, I used to go down there with my parents there at Wah-sucks.

Q. That is as far back as you can remember?

A. That is about as far back as I can remember, yes.

Redirect examination.

Q. Now, were there more fished there in 1890 or those years that you remember in the first part of your acquaintance with that point —were there more fished then than in late years, or not?

695 A. Yes, there is more fished.

Examination by the Court:

Q. Mr. Bruno, you said there were two fishing points there, one above the other. Are they both there now?

A. They are both there now.

Q. The Government didn't disturb either of them?

A. No, it didn't disturb them.

Q. In blasting off the rock there, they didn't destroy one of the fishing places?

A. No, they didn't.

Q. Well, now, where are those two located? Are they located on the upper side of that rock or the lower side of it, or one on the upper and one on the lower?

A. One on the upper and one on the lower.

Q. They fished with dip nets at both places?

A. Yes, sir.

Excused.

696 SMISKAN PA-NA-WUCK, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Louie Brown, Interpreter.

Direct examination.

Questions by Mr. Rankin:

— Where do you live, Smiskan?

A. I live at Yakima.

Q. Are you allotted on the Yakima Indian Reservation?

A. I have an allotment over on the Yakima Reservation.

Q. How old are you?

A. I could not say; somewheres along about 60.

Q. Where were you born?

A. Down here along the river at Wish-ham.

Q. Who were your parents? To what tribes did they belong?

A. My parents were on both sides of the river. My father belonged over on the Washington side, and he had relatives living on this side also.

Q. What tribe was his father a member of?

A. He was a Wish-ham and had some Wasco blood in him.

Q. What tribe was his mother a member of?

A. Just like my father was.

Q. Does he know where Wah-sucks is?

A. Yes, sir. I know that place Wah-sucks.

Q. Whereabouts from The Dalles is it, up or down the river?

A. Above The Dalles.

Q. Whereabouts from Mr. Seufert's cannery, above or below on the river?

A. Down below the cannery.

697 Q. What was Wah-sucks used by the Indians for?

A. Right along there at Wah-sucks, where the people used to have their dry-houses, for drying their fish.

Q. Where did they catch those fish?

A. Point called Kum-sucks, a dip stand.

Q. Who fished there, what people?

A. People fished at that point from across the river, then people from this side of the river.

Q. What tribe did those people belong to?

A. I have seen the Wasco tribe of Indians fish there; also Wish-hams, and the Klickitats.

Q. When does he remember of those people first fishing there, and when last fishing there?

A. I saw people fish there ever since I was big enough to remember. And since I grew up to be a man I fished there myself; and I know of three other men that fished there at the time I did; that is myself for one, Wasco Charley for another one, Wah-me-nashet for another man; and Charley Dick.

Q. When did he first fish there, about?

Court: Who, the witness?

Mr. Rankin: Yes.

A. I could not say just how many years ago.

Q. Was it a long time or short time ago that he fished there?

A. Well, I was a young man when I first fished there.

Q. How did you fish there?

A. I fished there with a dip net.

Q. Did you fish from the rocks, or did you have a stand, or how?

A. They make a little dip stand there to dip off of.

698 Q. How do they make that?

A. They take poles and lay them out on the rocks like that, two of them; then they make a platform out here where they stand and dip right there off this platform.

Q. Have they done that at Kum-sucks?

A. Yes, sir.

Q. Could you also fish there at any place in the old Kum-sucks, without using that sort of a platform?

A. There is other places there where we used to fish without this scaffold.

Q. What did they do with the fish they caught there?

A. We dried them for our own use.

Q. Where did you dry them?

A. Back from this Kum-sucks, over on the shore, the place that I had reference to before; out from there, where the dry-houses was.

Q. When did he last fish with a dip net at Kum-sucks?

A. Oh, I just could not say how long; perhaps twelve or thirteen years ago.

Q. Why did the Yakimas go there to fish?

A. We went over there to fish at Kum-sucks because we thought we had a right to go there to fish.

Q. What season of the year would they go there to fish?

A. We have gone over there to fish in the spring when the river is coming up; then in the fall.

Q. He spoke in his previous answer of the right to fish. Ask him what he means by the right to fish at Kum-sucks.

A. The reason why I said that we had a right to go there and fish, because we always had that right before, and we always still thought that we had that right to go there to fish.

699 Q. Did the Wasco Indians have a right to fish there too?

A. Yes, they fished there. I thought they had right as much as we had and we had as much right as they had.

Q. How regularly would they go there to fish, every year or not every year? I mean regularly, with regard to season?

A. We have always fished there; whenever it came time for fish, why, we went there for fish.

Q. Do you mean every fishing season, or not?

A. Every year.

Q. Where did they cross?

Court: I don't think you need go into that further.

Mr. Rankin: All right, your Honor.

Q. What position do you occupy among your people?

A. Today I am the Chief of my tribe.

Q. What tribe is that?

A. Today I am a Chief of my tribe called the Wish-hams.

Q. Who was chief just before him?

A. Louis Simpson was the chief.

Q. Do you know Sam Williams?

A. Yes, sir.

Q. How long have you known Sam Williams?

A. I know him quite a number of years.

Q. Did you ever see Sam Williams fish at Kum-sucks?

A. Yes, I have seen him fish there.

Q. How long ago?

A. I could not say just exactly how long it was I saw him fishing there, but somewhere along 13 or 14 years.

Q. How was he fishing?

A. I saw him fish there with a net.

Q. Have you seen him fish there any other way than with a net?

700 A. Last time I saw him fish there was with a fish wheel.

Q. How long ago was that?

A. As near as I can tell, about five years ago.

Q. Did you see him fish there more than one year with a scow fish wheel?

A. It might have been two years and it might have been three years that I saw him fish with the wheel.

Cross-examination.

Questions by Mr. Bennett:

— Ask him what kind of a net Sam Williams was fishing with when he saw him fishing with a net.

A. A net.

Q. A long net?

A. It was a net, pretty good long net I saw him use.

Q. Ask him if it was a gill-net.

A. I don't know whether it is a gill-net or what it is, but it was a net was set out along the eddy there.

Q. Ask him if he was born at Wish-ham village?

A. Yes, sir.

Q. Ask him what his business is over on the Reservation.

A. My business at home is farming.

Q. Ask him if he has cattle and horses.

A. I have a few horses but no cattle.

Q. Ask him if he has sheep.

A. No sheep.

Q. Ask him if his tribe has a fishing place over there by Wish-ham.

A. Yes, we had a place along there to Wish-ham to catch fish.

Q. Ask him if there was a good many places to fish there, a good many dip stands.

A. Yes, there is quite a few places along there to catch fish.

701 Q. Ask him if they were good places.

A. There is some pretty good fishing points, and others are not so good.

Redirect examination:

Q. Did you ever see Sam Williams fish with a dip-net at Kum-sucks?

A. Yes, sir.

Court: How many fishing places did they have there at Kum-sucks?

Mr. Rankin: Stands, your Honor.

Court: Yes. How many fishing stands did you have there at Kum-sucks?

A. There is two main dip stands, and there is others along there where they used to fish.

Court: Well, where were those two main dip stands? One above and one below the point of rocks at Kum-sucks?

A. There is one what we call Kum-sucks; that is the main dipping point. And there is another one below that a ways.

Excused,

702 WALLULATUM, a witness called on behalf of the Government, being first duly sworn, testified as follows:
Charley Pitt, Interpreter.

Direct examination.

Questions by Mr. Rankin:

— Where do you live?

A. Warm Springs.

Q. How long have you lived at Warm Springs?

A. I have not kept the time of the years, how long I have been there; but I have been there a good many years.

Q. What tribe do you belong to?

A. I belong to the people that lived, used to live at The Dalles many years ago.

Q. Well, what tribe was it? What did they call the tribe? What was the name of their tribe?

A. He says, the Chiefs of my tribe was old Man Kukup and Sun-sustas that inhabited The Dalles.

Q. Did he ever see any Indians from the north side, Wish-hams, Skein, Yakima Indians on his side of the Columbia River?

A. I have seen them, yes.

Q. Did many come over, or just one man now and then?

A. He says that they never came for anything only fishing, and they used to come in great bands to fish.

Q. Where did they fish?

A. As this Wah-sucks was a place, was the earliest place for fishing, and there is where they congregated together usually.

Q. How old are you?

703 A. I have no knowledge of my age, only as men has guessed at my age. I am over 90; above, away above.

Q. Did you ever fish at Wah-sucks?

A. He says, I have with the rest of the people.

Q. What were the relations between those Indians that lived on the south side of the river and those that came from the north side, the Washington side?

A. They were related by marriage from away earliest times that I can remember, and up to the time that I was a man they were married backwards and forwards.

Q. Were those tribes from the north side friendly with the tribes from the Oregon side, or were they at war with each other?

A. No.

Q. No what?

A. No war; no war; no trouble.

Q. Have you in your own memory any recollection of trouble at any time between those tribes?

A. Nothing ever brought them trouble. All they done is gather fish and eat and go together. There never was any difference in anything.

Q. Among the history of his people, as he remembers it, was there anything that ever spoke of trouble between those tribes?

A. No.

Q. Did you as an Indian on the south side of the Columbia River, recognize right of those tribes to come from the north side and fish at Kum-sucks?

A. He says, will the gentleman hear me, that this fishing point was never paid for, nor nobody ever charged anything. The fishing points was free for all; nothing made by it.

704 Q. How did they fish at Kum-sucks?

A. To my recollection they fished with nets, quite good sized nets. And they fished with those nets at certain points where the fish run.

Q. Dip nets, or what kind of nets?

A. Dip nets.

Cross-examination.

Questions by Mr. Bennett:

— Ask him if he remembers Dr. McLoughlin.

A. No.

Q. Ask him if he remembers General Grant.

A. No, I don't know him.

Q. Ask him if he remembers Sheridan; General Sheridan or Lieutenant Sheridan.

A. I have nothing to do with those officers at all whatever.

Q. Ask him if he remembers him.

A. No, no; I don't remember them.

Q. Ask him if he remembers Major Haller.

A. No, no, I could not tell you that I know any of them.

Q. Ask him where he was born.

A. I was born up at The Dalles; that is what I have been told.

Q. Ask him if he lived on Mill Creek when he was a boy, close to The Dalles.

A. I have but very little knowledge of this creek that you speak of, but my main place was along around about the Columbia River, farther up.

Q. Ask him if he knows where Mill Creek is.

A. No, not by that name.

705 Q. Ask him if he knows a little creek that runs into the Columbia River right there by The Dalles.

A. Well, I believe I remember that creek.

Q. Ask him if he was born on that creek.

A. No.

Q. Ask him if he ever lived on that creek.

A. No.

Q. Ask him if he belongs to the Wasco tribe.

A. I am a member, but I am not a real Wasco; but I am a member of the Wascos.

Q. Ask him where his tribe lived.

A. His other tribe is toward the Umatillas,

Q. Is what?

A. His other tribe is toward the Umatillas.

Q. Toward Umatilla?

A. Yes.

Q. Ask him if he is not a Umatilla Indian.

A. My mother belonged to The Dalles tribe, and my father was a Umatilla, yes.

Q. Ask him if he was not born up about Umatilla.

A. No. I was born here at The Dalles.

Q. Ask him if he ever lived up about Umatilla.

A. I have been up there different times, yes.

Q. Ask him if he lived up there a good many years.

A. I never really lived there any number of years, but I have been there several times, backwards and forwards.

Q. Ask him if he remembers the war between the whites and the Yakima Indians.

A. I never was with the war, but I have heard that they had war between the whites and Indians farther away.

Q. Ask him where he lived at the time of that war.

A. I was here at the Columbia River.

706 A. At the Columbia River, there at The Dalles, Columbia River.

Q. At The Dalles?

A. Yes.

Q. Ask him if the Wasco Indians went to war at that time with the whites.

A. No. No, I have never witnessed any fight between Indians and whites at all. I am an old man now. I never seen anything of the kind.

Q. Ask him if the Yakima Indians on the other side went to war with the whites.

A. I have understood my people to say that they did war. There was Yakima Indians went to war with the whites. I just heard that.

Q. Ask him if the Wasco Indians didn't fight with the whites, on their side.

Interpreter: On what side?

Q. Ask him if the Wasco Indians didn't fight in that war on their side, on the side of the whites; if they didn't help the whites.

A. I don't remember.

Q. What say?

A. I don't remember; I don't think so.

Q. Ask him if he went on the Reserve with the first Indians, or if there were a good many Indians there when he went there.

A. I was among the first.

Q. Ask him if that was about 60 years ago.

A. I have no knowledge of the years at all, when that could have been.

707 Q. Ask him how big a boy he was when he went on the Reserve.

A. Well, he says, I was no little boy at the time; but I was a grown

young man, grown up. He says, I was not a little boy; I was a grown man.

Q. Ask him about how old he was then.

A. He says, I am an Indian. We don't get records of our years at all. I don't know.

Q. Ask him if he was married when he went on the Reserve.

A. Not yet.

Q. Ask him if he was not old enough to get married.

A. Pretty hard question, he says. I don't really know whether I was old enough or not.

Q. All right.

Excused.

708 TULLUX HOLIQUILLA, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Charley Pitt, Interpreter.

Direct examination.

Questions by Mr. Rankin:

— Where were you born?

A. At The Dalles.

Q. Where do you live now?

A. On She-tackt.

Q. Where is that?

A. That is Warm Springs. That is the Indian name, She-tackt.

Q. On Warm Springs Reservation?

A. Yes.

Q. How long have you been there?

A. I don't know.

Q. About how old are you?

A. By guess I am about 85; that is what it is said that I was.

Q. Has he ever been in the service of the Government?

A. In my young days, yes. I was in the service at different times.

Q. What was his duty or position?

A. He worked there, different parts, whatever they put him to. He had to do pretty near everything they wanted done.

Q. Was he ever in the service of the Government during times of Indian troubles, wars with Indians?

A. I was with the Indians during the war time, yes.

Q. Was he for the United States Government?

A. Yes.

Q. Are you acquainted with Wah-sucks? Do you know where Wah-sucks is?

A. Yes.

709 Q. Where is it with reference to The Dalles?

A. It is up the river.

Q. Do you know where Mr. Seufert's cannery is?

A. Yes.

Q. Whereabouts with reference to Mr. Seufert's cannery is Wah-sucks? Below or above?

A. It is further up; Wah-sucks is below and Seufert's cannery is above.

Q. Did he ever fish at Wah-sucks?

A. Yes, he did, in the past.

Q. Did he see any one else fish at Wah-sucks?

A. I have; many, many people. I have seen many people fish there.

Q. To what tribes did those people belong?

A. I have seen the Wish-ham people and the Yakima Indians.

Q. Do you know what Kum-sucks is?

A. Yes, they fished there at Kum-sucks.

Q. What were the names of the tribes from the north side that fished at Kum-sucks?

A. The Indians that I remember was Inyos, and Stick Joe. They call him To-we-Hayas, and his English name is Stick Joe. Spencer, old man Spencer, and Inyas and Stywas. They had various tribes among themselves. They are head of the different tribes of their own.

Q. What years do you remember about fishing at Kum-sucks?

A. Oh, it is away back more than ten years ago since I last fished there.

Q. How early does he remember of the Indians fishing there, if he can fix that date how long ago?

A. As far back as I can remember. From a boy up, I have knowned the Indians coming together there to fish.

710 Q. How did they fish there?

A. Long ago they only fished with dip nets, long ago.

Q. How many places did they have dip nets long ago at Kum-sucks?

A. There was two that I remember around Kum-sucks there, together close by.

Q. Did they catch many fish from those two places?

A. Yes, they caught a great many salmon.

Q. How did they fish over the water? How did they get out over the water to fish?

A. Get out?

Q. Yes. If I asked how they fished, he would say with dip net. But I want to know where they stood.

A. Sometimes they fish on a platform, built out that way, away from the rock. And sometimes they stood on the rocks to fish.

Q. What did they do with those fish when they caught them right there?

A. He says they caught them and took them and cut them all up and dried them under dry house.

Q. Where was that dry house?

A. Anywhere away from the water, on the island there.

Q. Where did those Indians that came from the north side stay when they fished there?

A. They camped with the other Indians belonging there.

Q. Whereabouts was their camp?

A. It is around about where Wah-sucks was and farther away from the river.

Q. Was there a slough or smaller stream in high water ran back of the place where they camped?

711 A. He says, at high water there is water runs through there and makes deep water and sloughs along there.

Q. Did any white men ever interfere with him when he was fishing there at Kum-sucks?

A. Not at Wah-sucks, but farther up the river they did interfere with me.

Q. Why did the Indians from both sides go to Kum-sucks?

A. That is the first place of fishing.

Q. How did the Yakimas come to fish there? I don't mean as to the time of the fishing, but did they think they had a right to fish there?

A. They never knew the difference between the Wasco people and their fishing places. It was all one to them. The fishing points belonged to them all.

Q. Did they know any boundaries or limitations to their fishing places?

A. No; no boundaries.

Q. What war did he serve in on behalf of the Government?

A. I fought in the Piute war; then the last fight I was in with the Modocs and the Captain Jack war; that was my last war.

Q. Who was the General in the Piute war under whom he served?

A. John Dyar was one, a leader.

Q. Who else?

A. Donald McKay.

Q. Whom did he serve under in the Modoc war?

A. Donald McKay was the leader of the Warm Springs; out among the Modocs.

Q. Now, who was the white man?

A. Colonel Gray.

712 Q. Is that your picture, Tullux?

A. Yes.

Q. Ask him who Colonel Gray is.

A. He is a soldier and officer.

Mr. Bennett: I don't make any question that this man was in the wars. I know that myself.

Mr. Rankin: All right, Judge. Go ahead and cross-examine.

Cross-examination:

Questions by Mr. Bennett:

— What tribe do you belong to, Tullux?

A. I am a Wasco.

Q. Wasco?

A. I am a Wasco, yes.

Q. Ask him if his tribe has not always been friendly with the whites.

A. They were always friends to the whites, yes.

Q. Ask him if they were not friendly to the whites in the wars with the Yakimas.

Interpreter: Who, them?

Q. Yes, the Wasco tribe.

A. No, they were not friendly with the Yakimas when they were fighting. Kept away.

Q. No; but ask him if they weren't friendly with the whites. Ask him if his tribe was not friendly with the whites.

A. Yes, the white people were our friends when the war going on at Yakima.

Q. Ask him if some of the young men did not fight with the whites—that is, help the whites.

A. No, not that I know of.

Q. Ask him if he knows whether they did or not.

713 A. No. I know that nobody—none of us that I know of in my country.

Q. Ask him if some of them were not scouts with the whites.

A. From there?

Q. Yes; to help the whites. Ask him if they were not scouts to help the whites.

A. No.

Q. Ask him when he went on the Reservation.

A. Soon after the treaty was made, I was taken out there.

Q. Ask him if he was at the making of the treaty.

A. I was there, yes.

Q. Ask him where it was made, whereabouts.

A. On Three Mile.

Q. Ask him if it was made where the road from The Dalles to the Warm Springs crosses Three Mile, about there.

A. No, it is on another road. The old road used to go to Five Mile; farther up Three Mile.

Q. The old road that used to go where, did he say?

A. The old road used to go over from The Dalles towards Five Mile, farther up, not where the present road is from The Dalles to Warm Springs. That is the present road, lower road.

Q. Ask him how far above the present road the council was held.

A. Oh, he says, I hardly know. It might be four or five miles for all I know. It is some quite a piece and was up the creek. This meeting was held on an Indian road, old Indian road; and Indians were camped there.

Q. Ask him if that was 7 or 8 miles from the Columbia River.

714 A. No. Of course, I don't know much about miles; but I don't hardly think that it could have been 8 miles. He says he thinks maybe it was 6 miles.

Q. Now, ask him how often he came back to the country around The Dalles after he went on the Reservation.

A. I have made many trips from the Warm Springs to The Dalles after I moved out.

Q. Ask him if he came back every year.

A. Yes, he says, I oftentimes came every year with the pack train.

Q. Ask him when was the last time that he was at Wah-sucks.

A. I was down there two years ago.

Q. Ask him how long before that since he has been there. How long before that was the next to the last time that he was there.

A. Before that?

Q. Yes, before two years ago.

A. Oh, I have been at Wah-sucks different times besides that.

Q. Ask him if I understood him right that the last time he saw them fishing there was about 12 or 13 years ago.

A. You misunderstood me.

Q. Ask him how long ago it was that he claims to have seen Spencer fishing there, the Indian Spencer fishing there.

A. Why, he says, when I was a full-grown man, I was no boy then, when I seen him last.

Q. Ask him if it was 25 or 30 years ago.

A. It might be 20 years ago.

Q. It might have been 20 years ago?

A. Yes.

Q. Ask him if Spencer was a boy or a full-grown man
715 when he saw him fishing there.

A. He was more than middle age; about middle-aged man. He was not a boy.

Q. Ask him if Spencer was fishing with a dip net.

A. Yes.

Q. Ask him if he knows George Me-nin-ocht.

A. I know him, yes. •

Q. Ask him if he ever saw him fishing there.

A. I have seen him there; but I never saw him fish.

Q. Ask him how far apart these two fishing places were. As I understood him, he said there were two fishing places on that point.

A. They are not very far apart.

Q. Ask him about how far.

A. He says, I would not like to guess because I might miss it, too far or too close.

Q. Well, tell him to give his best judgment, as near as he can.

A. Oh, it might be something like 35 or 40 steps maybe; maybe more or less.

Q. Ask him if these places were on the upper or the lower side of the island.

A. On the lower side.

Q. Ask him if they were both on the lower side.

A. Yes.

Court: Do you mean at the point of Kum-sucks?

Mr. Bennett: Yes, that is what you asked him, isn't it?

A. Yes, on that section.

Court: What was that last answer?

- A. They were both on the lower side.
716 Q. Ask him if one of those places was right at the point.
A. There is one at a certain point there; one of their spots.

Court: At the point farthest out in the river?

A. He says, it is out farther towards the river, this point that I speak of.

Q. Ask him if it was on the point like that, where it extends farthest out into the river, like that.

A. Yes.

Q. And the other one, he says, was about 35 or 40 steps from there?

Interpreter: Yes, more or less.

Q. Ask him that question again. I want to be sure about that.

A. I am just only guessing, he says; that it might be that way or farther or nearer; I don't know.

Q. Ask him how far Wah-sucks is from Mr. Seufert's cannery.

A. I could not give you the exact distance. I don't know.

Q. Tell him, as near as he can.

A. He says, I could not say.

Q. Ask him if it was four or five miles.

A. It is not four miles; but then it might be such a thing as two miles. I don't know, he says.

Q. Ask him if he thinks it was about two miles.

A. He said, I have no idea. I only said it might be something like two miles; but I don't know. Really, I don't know, he says.

Q. Ask him how far this point was from The Dalles, Kum-sucks.

A. Kum-sucks?

Q. Yes; how far Kum-sucks was from The Dalles.

A. By the road perhaps it might be three mile.

717 Redirect examination:

Q. Ask him if he knows how much a white man's mile is.

A. No.

Q. And these answers to Judge Bennett's questions about distances and miles, what can he say about them—are they accurate or not?

A. He says, you understand me that I said I don't know, really.

Q. When he was last there at Kum-sucks, was there any of the old dipping places left?

A. At the time I was there, yes.

Q. Had some of them been destroyed by blasting off the point?

A. Yes, the point was blowed off; but a little farther back it was all right.

Q. How many places are now left for dipping, after the point was blown off?

A. The fishing points are just as many as they was before they blowed that piece off.

Q. He testified that they had one away out here on the point that was farthest in the river. Ask him if that point has been blown off.

A. That is the same one, I think, yes; the same one.

Q. Well, ask him if he understands that that point has been blown off.

A. There is a piece of it that was blown off.

Q. Is there still dip net fishing places left there?

A. Yes, the fishing point is there yet.

Q. Did he ever hear of any of the Yakima tribes being at war with other tribes?

718 A. Yes, I heard when they were fighting the whites, yes. I was told that they were fighting.

Q. Ask him if he knows what country those Yakimas who were fighting the whites occupied.

A. A portion of country that is called Nack-cheese, by the Indian terms.

Q. Where was Nack-cheese?

A. It is down on the Yakima Reserve some distance.

Q. Does he know east and west? Ask him if he knows east and west.

A. Yes, I do.

Q. Ask him if he has ever been on the Yakima Reservation.

A. Yes, I have.

Q. Was that band of Yakimas that were at war with the whites—where did they live with respect to the Yakima Reservation?

A. The Indians that lived east, away down the river.

Q. What was the relation of those Indians that fished at Wah-sucks from the north side and from the Oregon side, were they friendly or at war?

A. We were relation; brought up as relation, together.

Q. Were all the Yakima Indians, the real Yakima tribe in that war with the whites?

A. It is this way: They were the ones that were fighting were a separate tribe, we might say, were fighting the whites; not the Yakimas up this way.

Q. Not the real Yakimas that are down west?

A. No; it was the Indians that lived farther down Yakima River.

Q. Next to what country did they live?

719 A. Down on the Nock-cheese; that is the Indian name of that country and the people lives there.

Q. How near was that to the Snake River?

A. I don't know where that is.

Recross-examination:

Q. Ask him if the Klickitat Indians were also fighting the whites.

A. Not that I know of.

Q. Ask him if the Klickitats and the Yakimas didn't have a battle with the whites down at the Cascade Locks.

A. Not to my knowledge. I know nothing about that part of it.

Q. Ask him if he didn't hear about the Indians attacking the Block-house and massacring the people down there at the Cascade Locks.

Mr. Rankin: What Indians?

Mr. Bennett: The Klickitats and the Yakimas.

A. Since you spoke of it, I believe I did hear something regarding the massacre down there. I heard of it.

Q. Ask him if he does not remember that the Skein Indians were the Indians who started that war by murdering Sub-Indian Agent Bolan.

Interpreter: At what reservation?

Q. Well, he was just a general sub-agent with the Indians.

A. I don't know anything about that.

Excused.

720 ALBERT KUCK-UP, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

Q. I believe your father signed the original Warm Spring treaty, did he not?

A. Yes.

Q. Was he the first one to sign it?

A. Yes, he was the first signer.

Q. What tribe do you belong to?

A. I am on the Tenino.

Q. Where are you living now?

A. At Warm Springs.

Q. And how long have you been living there, about how long?

A. Ever since the Indians were taken out to the Warm Springs I have lived there.

Q. And about how old are you?

A. I have been told by the white people that used to know me when I was a boy in the early day when the gold excitement at California, I was a boy with my father, and they think that I am about —they say, they tell me that I was about 87.

Q. 87?

A. That is what he has been told by the white people that knew him when he was a boy.

Q. Where did he live before he went to Warm Spring Reservation?

A. On the Columbia River, on Tenino.

Q. Does he know where Wah-sucks, the point Wah-sucks, is?

A. I do.

721 Q. Is that above or below The Dalles?

A. It is above The Dalles.

Q. Do you know where Mr. Seufert's cannery is now located?

A. Yes, I know about where it is.

Q. Is Wah-sucks above or below the point where Mr. Seufert's cannery is?

A. It is below.

Q. What did Indians go to Wah-sucks for?

A. They went there to fish, when fishing time they all come together there and fish. That was their living, fish was, in the olden times.

Q. What did they call the fishing place?

A. That particular place was called by two names, one by Wah-sucks and the other was by Kum-sucks.

Q. When did they go to Kum-sucks, the Indians?

A. They came there at very early fishing time, earlier than the other places; that is why the Indians came together to fish there.

Q. The Indians; what Indians?

A. He says there is great many Indians came there at the fishing time; some from Dog River; some from Klickitat; some from Yakima; some from Wish-ham; some from Skein, and various places up and down the river. When the fishing point was early they came there.

Q. Where is Dog River, which side of the Columbia?

A. Up here to Hood; what is now known as Hood River.

Q. How long would those Indians stay at Wah-sucks?

A. They stayed there as long as the fishery lasted; then they moved over to Wish-ham to the next fishing place; then they go on up to Skein, on up to Tenino, and go on up as far as any

722 fish was running at that time. They didn't stay at Wah-sucks all the time.

Q. About how long did they stay there?

A. Some years the fishing time was short; some years longer, two and three and four weeks sometimes; two weeks, and then the water dries down.

Q. State whether or not Wah-sucks was a part of all that great country clear up to Celilo, where they fished at various times.

A. He says it is a part of the fishing points all up and down the river on the Oregon side, only this was early fishing point, Wah-sucks.

Q. Did he ever fish there at Kum-sucks himself?

A. I have fished myself, different times.

Q. What other Indians have you seen fishing there?

A. Do you ask us to tell the leading men of these different tribes that I have mentioned?

Q. Yes.

A. Well, he says, on the Wish-ham side were Seelatsee, Colwash, and George Me-nin-ocht, up to Skein. Those leading men were on the other side, the Wish-ham side. And on our side was my father, old man Kuck-up on this side.

Q. Were there any other lesser chiefs than those he has mentioned he has seen fishing there, from tribes of either side?

A. The leading men, he says, from Yakima was Stick Joe, and Spencer, and Inyas, and Joe Stwyer. Those were the leading men of the Yakima people used to bring their people there to fish.

723 Q. When were you down there last at Wah-sucks?

A. I have never come to Wah-sucks very many more times since moving away from there.

Q. Now, in the old times before he moved away, how did the Indians fish there?

A. As far back as I can remember Indians always fished there, and never know anything more before the whites.

Q. How did they fish there—the manner, means of fishing?

A. They fished with dip nets. That is all the way of fishing they had in olden times, and that is the way they fished.

Q. Did they use platforms there at Wah-sucks, or did they stand on the bank?

A. It all depend- on where the fishing point was. Some places they used platforms; some places it is just off the rocks.

Q. What did they do with those fish right there?

A. He says, the Indians caught fish and dried them and put them up in various ways. They pounded them sometimes, and sometimes they fixed them one way, sometimes another way.

Q. They did that at Wah-sucks?

A. Yes, that is what they did there at the first fishing place.

Q. Now, did the Yakima Indians that came down do that at Wah-sucks, too?

A. Why, he says, that the fishing right was free to everybody. They didn't have to pay to come to fish there nor take anything out of the fishing place; all free.

724 Q. Did the Tenino Indians recognize that the Yakimas had a right to come there and fish there?

A. The old men, the leading men of Tenino and the leading men at Wah-sucks, and the leading men of the Wish-ham, and other leading men that I have mentioned, they had always stayed together. The leading men was at peace with one another, longer than I can say, away back; and they have always been together, they were raised together, and they fished together, and went together when they were fishing there.

Q. Well, I want him to answer particularly my question, as to whether they recognized the right of the Yakimas to go there and fish?

A. It was known by the Indians that they all had the same right to fish on either side. It was known by the Indians from both sides of the river.

Q. Did the Tenino Indians fish there on the north or Washington side?

A. He says that the Teninos went over there to fish when they had to, when there was nothing on this side; and same way with people from Wah-sucks who used to live there; and they used to go across there when they had to, when there is no fishing on this side.

Cross-examination.

Questions by Mr. Bennett:

— Ask him if his tribe was what was known as the lower Des-chutes.

A. I am Tenino.

Q. Well, ask him if the Teninos and Celilos made up the tribe

that was called the lower Deschutes, or if they belonged to the tribe that was called the Lower Deschutes.

A. He says, tell the gentleman that from Tenino they were related up to Celilo and up and down, up the Deschutes, they were all one people. They were related very closely.

Q. Ask him if his father didn't sign the treaty as chief of the Lower Deschutes.

A. My father signed the treaty for all from Tenino up, all I have mentioned; he signed for them all.

Q. Ask him if his tribe had the country, if they owned the country from Tenino up to the Deschutes.

A. He says, yes; that from Tenino right on up, up the Deschutes on up to Celilo and Deschutes, that country was ours. And he says some of them was called Warm Springs, but that has been a late name.

Q. Ask him if his father at the time of the treaty was the only Chief of the Lower Deschutes.

A. My father was the head man with the Indians above Tenino, not the Wascos.

Q. I understand.

A. Yes; not the Wascos; but all the Indians above, why my father was recognized as the head man.

Q. Now ask him if he remembers the Yakima Indian war.

A. I only heard that there was a war going on at the time, but I was not in it myself.

Q. Ask him how old he was then.

A. Oh, he says, I can't say exactly; but, he says, he was a young man, very near a young man then. He was a young man, and that is why he says he don't know much about this war. He only heard there was a war over there, but that is all he heard. He was a young man.

726 Q. Ask him if his tribe went to war at that time.

A. I know nothing about it. Perhaps the old settlers could say whether our people were in it or not. I don't think so.

Q. He says he doesn't think so?

A. No, I don't think even the old settlers, the white people, could say that we were ever in that war at all.

Q. Ask him if his tribe was not always friendly with the whites then.

A. He says that my father was glad to see the white man come through, the emigrant from the country, in the early day. They come through the country poor and he pitied them, and he told his men, wherever you have a chance to bring them to the camp, bring them, as they come through poor, bare-foot, and had nothing; and my father pitied them. He was a friend to the white man and he made his men to be friend to the white man too.

Q. Ask him if they were not friends to the white man at the time of the Yakima war.

A. He says, my father's people was on this side of the river, while the others—they said they were fighting over there, we never went there.

Q. Ask him if the white men didn't send his father over to try to keep Kami-aken from going to wat.

A. He says, tell the friend, white man, that that was so. He was sent out to go to try to put the war down. My father was sent out there, yes.

Q. Now, ask him if when the Yakima Indians came down to the river, the Indians along the river didn't sell them fish.

A. Not that I know of. Not that I know of. All I know, 727 they used to fish there at the Columbia River.

Q. Well, ask him if the Indians along the river didn't sell fish to any other Indians at all in an early day.

A. The fishing points never was bought by any man, never belonged to any particular one. People had the right to go and fish all the time. They didn't have to buy anything from anybody. There was no one to buy it from. There was no price to the getting fish.

Q. He says they didn't sell fish?

A. No. He says the fishery was free. We didn't have to buy; we didn't have to sell it. It was there all the time.

Q. Ask him if they didn't trade fish to the other Indians, to the Indians from away from the river. Ask him if the Indians along the river didn't trade fish to the other Indians.

A. They didn't have to. They went and got it themselves.

Q. Ask him if the places where they fished off the rocks were where the rocks were straight up and down.

A. Some places we stood on the rock on top to fish right down to the water.

Q. When it was straight up and down?

A. Yes, right up and down. We fished there sometimes.

Q. Ask him if the places where they put the platform were where the rock was sloping, and they would put it over from the top that way so they could get right over the water.

A. He says that salmon had only certain places to run; some points they run alongside of the rocks. There they fished them from the bank. Some places the salmon run out away from the bank, then there was platforms built out to dip them out. Salmon didn't run every place, but they had only certain places to run.

728 They built platforms for some fishing, and not for all fishing.

Q. Ask him if he claims that they fished, that all these Indians fished on Kum-sucks from two to four weeks every year.

A. I said something like that, along there, or less time.

Q. Well, does he mean from two to four weeks—does he mean that they fished from two to four weeks?

A. It all depended on the water, how long the water would keep up to these fishing points. Sometimes it would fall quicker and sometimes slower.

Q. Well, what I am getting at is—ask him whether two weeks was about the shortest time that they stayed there. Ask him whether two weeks was about the shortest time they stayed there, and four weeks about the longest time.

A. Yes, that was a long time. Yes, I said it all depended on

how long the water kept up. Sometimes on hot days it would just boom right up and boom right up; and when it quits it just goes right down. It depended on the water.

Q. But does he say it would not be less than two weeks nor more than four?

A. It was something like two weeks and no longer than four at any time.

Redirect examination.

— When he speaks of not less than two or any longer than four weeks, does he mean the spring fishing?

A. I meant that the first salmon run.

729 Q. How about later in the season. later on after the high water had gone down, did they ever go back to fish at Wah-sucks then?

A. The water used to fall at Wah-sucks away from fishing points, and they were compelled to move further up the other way.

Q. State whether or not they ever fished in the fall in his recollection.

A. I don't think there is anything ever I heard of any salmon was caught in the fall, only sturgeon. That was a good place for sturgeon along in the fall; late in the fall they caught sturgeon.

Q. Did they use sturgeon as a food just the same as they did salmon?

A. We put up sturgeon just the same way, very near like the salmon. We dried them.

Q. Did they ever trade or exchange dried salmon after they had dried it?

A. Trade them?

Q. Yes; trade the dried salmon.

A. He says that they never had to buy them. They always had plenty.

Q. I don't mean buy, Charley; trade dried—that is prepared, after it was laid out in the sun.

A. Well, that is what he says, that everybody had plenty without trading them for salmon.

Q. Now, he said he heard of the Yakima war. Ask him at the time of the Yakima war, the Indians,—Wish-hams, the Klickitats, those people on the north side, were at war with his tribe or any on the south side.

730 A. Any on the south side?

Q. Yes.

A. No, they never had any war on the Oregon side with the Indians no time, only at that time when they was fighting over the other side of the mountains.

Q. Well, whom was that war between?

A. Kami-aken.

Q. Kami-aken.

A. Yes, he was the one that fought the whites.

Recross-examination:

Q. Ask him if they caught sturgeon with a dip net.

A. No; tell the gentleman they never caught them with a dip net, but they caught them with a line, a hook, in the olden times.

Q. Ask him if they didn't go out with boats to catch sturgeon, out on the water with boats to catch the sturgeon, and with lines and hooks.

A. In the early days we had no boats; we had canoes that we did take out the line and the bait, away out in the river, with a sinker and the bait on the hook; left the line out in the river; then come back with canoes and wait till there was something on the line. Then we would take our canoes and go out and get the sturgeon. We had not boat in the olden times, only canoes.

Redirect examination:

Q. Ask him if they fished for sturgeon that way.

Court: You are putting a new element into this case now. The element of the sturgeon has not entered here before.

Mr. Rankin: I think it is within the treaty rights your
731 Honor. Sturgeon is fish. I think the Court will take judicial knowledge they were protected in their usual fishing places.

Court: That does not have reference to this place. They go out in the river and fish those, not at this point.

Excused.

732 SAM WILLIAMS, called as a witness on behalf of the Government, being first duly sworn testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Are you acquainted with Three Mile Rapids above The Dalles?

A. Yes, sir.

Q. Do you know where Seufert Brothers' dock, cement wall, has been built up there?

A. Yes.

Q. How long ago did you see that? About how long ago?

A. About two years.

Q. The docks? That wall? When was the last time you saw it, Sam?

A. Last year.

Q. Last year?

A. Yes.

Q. Now, where with reference to that wall did your wheel used to stand?

A. That same place.

Q. Right at the same place there?

A. Yes, sir.

Q. When did you first fish off that point? I don't mean with scow-wheel, but any way. Do you know Kum-sucks?

A. Kum-sucks, yes, sir.

Mr. Bennett: They have already gone into that. I suppose under the stipulation they have a right to go over it again if they want to.

Court: Is this in the former testimony of this witness?

Mr. Rankin: I want to explain some of the former testimony, your Honor. I think it is entitled to explanation.

Court: Very well.

Q. When did you first fish at that point,—Kum-sucks?

A. With fish-wheel or gill-net?

Q. Any way. When did you first fish off there?

A. Four years after big flood.

Q. Four years after the big flood?

A. Yes, I fished with gill-net.

Q. Now, in your former testimony, I asked you when you had first fished there. You said 1906, 1907 and 1908.

A. Yes.

Q. Is that the time you mean, or do you understand the time?

A. I don't understand no time, but I know when high water come.

Q. Do you mean 1896, 1897, and 1898, or 1906, 1907, and 1908?

A. I can't understand you?

Court: The high water was in 1894, if that is what you are talking about. He says he fished there two years after that.

Mr. Rankin: In his former testimony he said 1903, 1907, and 1908.

Q. That was with gill-net?

A. With gill-net.

Q. How do you work with gill-net? How do you fish with it?

A. I sent it across with a float and lead line below. Gill-net fish comes around there, they get caught.

Q. Is the current too swift off that point to put a gill-net in?

A. Where? Kum-sucks?

Q. Yes.

A. Too swift; I fish away inside.

734 Cross-examination.

Questions by Mr. Bennett:

— The last big high water there was in 1903, wasn't it?

A. What?

Q. The last big high water there was in 1903, wasn't it?

A. 1894, ain't it?

Q. Well, wasn't there a big high water there thirteen years ago?

A. No, not very high water.

Q. When was the biggest high water since 1894?

A. Well, I don't know exactly.

Q. Wasn't it in 1903?

A. Well, I can't understand this. It was high water one time.

Mr. Bennett: We have a stipulation, your Honor, that we may ask any questions on cross-examination that refer to the other testimony.
Court: Very well.

Q. When you were a boy, a small boy about so high, about four feet high, was your father living with the Cowlitz tribe?

A. Yakima.

Q. Who raised you, your mother or your father?

A. What?

Q. Who raised you when you were a boy, your mother or your father?

A. My mother and my father both.

Q. How old were you when your father left Cowlitz?

A. What?

Q. How old were you when your father went away from Cowlitz from the Cowlitz country?

735 A. From Yakima he went down with my mother.

Q. Well, then, did he go back again?

A. He go back?

Q. Yes, to Yakima?

A. No.

Q. He lived down there till he died, did he?

A. He got drowned.

Q. Down there at Cowlitz?

A. Cowlitz, when I was a little fellow.

Q. And then your mother raised you there on the Cowlitz until you were a man grown?

A. Yes, on Columbia River; not on the Cowlitz—on the Columbia River.

Q. Now, have you taken up a homestead?

A. On the Cowlitz?

Q. No, up here by The Dalles?

A. Yes.

Q. Your homestead is along the river right above The Dalles, is it?

A. No, sir, on little island.

Q. Yes, between The Dalles and this point in dispute?

A. Yes.

Q. How far from The Dalles?

A. Half a mile about.

Q. How far from this point in dispute? How far from this point Kum-sucks, or whatever you call it?

A. Well, I don't know. I thi about a mile.

Q. And when did you take that up?

A. I think that is this fall.

Q. This fall or last fall, a year ago?

A. Last fall, I think.

736 Q. About how long ago since you took that up?

A. Well, I forget now; but lately anyhow.

Q. Wasn't it March 3, 1915, March 3 of last year, along in the spring of last year?

A. Well, I don't know. I can't tell it in my head.

Q. You took it up there at the land office at The Dalles, did you?

A. Yes, sir.

Q. You have been living on it ever since?

A. Yes, sir.

Q. Claim it as your homestead now?

A. Yes.

Q. Now, you have got a fishing place down there, haven't you?

A. A little above there; away up above.

Q. You have got a place where you have got your wheel there on your own land, haven't you?

A. What?

Q. You have a wheel there on your own land there, don't you, sometimes?

A. I just cement that. I don't fish off it.

Q. You put in a wall a good deal like Mr. Seufert's in front of your property?

A. Yes. But that ain't my place to fish.

Q. Yes. To put your wheel at?

A. Yes, I put cement in.

Q. But you haven't fished there yet? None at all, you say?

A. No. No high water enough.

Q. There hasn't been high water enough yet?

A. No.

Q. Where was it you fished with a gill-net. You say you didn't fish right off this point. You understand this point here, don't you, on the picture?

737 A. I fished away back from that point, back in eddy right out from Henry Gulick's place.

Q. That was above this point, wasn't, quite a ways?

A. A little above, a little ways, just around.

Q. About four or five hundred feet above?

A. Oh, about 300 feet, I think.

Q. About how much?

A. About 300 feet along; just a little ways.

Q. Was it about 400 or 500 feet above this point that you fished with your nets here?

Mr. Rankin: He said about 300 feet.

Mr. Bennett: Oh, I didn't understand.

Q. About 300 feet, you think?

A. Yes, I think so, pretty close.

Q. Was that all the place where you fished with your nets up there?

A. The only place I fished all the time right along.

Redirect examination:

Q. Now, how is your memory on dates? Do you know dates—times, very well? White man's measure of time? Years? Do you understand when I say, Was that 20 years ago?

A. Well, yes, I know.

Q. You know dates? Do you know them very well, Sam?

A. Um-hum.

Q. All right.

Excused.

Adjourned until 10 A. M. Monday.

738

Defendant's Evidence.

HENRY GULICK, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

How old are you, Mr. Gulick?

A. 75.

Q. Whereabouts do you live?

A. I live at The Dalles.

Q. Do you live in The Dalles city, or above The Dalles?

A. No, I live about two miles out.

Q. Do you know where Three Mile Rapids, on the Columbia River, is?

A. Yes, sir.

Q. How far do you live from that?

A. Well, it might be a quarter of a mile. I don't know as it is, but it might be that.

Q. Which way?

A. Three Mile Rapids is north of me.

Q. Could you identify the tract of land on which you live by the map?

A. I think it is up here in this——

Q. That is supposed to be Three Mile Rapids here?

Mr. Rankin: Has he ever seen that map before?

A. No.

Q. Now, this is Lot 3, in Section 36, and this is Lot 2 in Section 36. This is Lot 1 and 2 of Section 1. This is Lot 3 of Section 1.

Mr. Rankin: This is the Columbia River comes down this way, flowing down.

739 Q. Do you know what lot you own part of? Do you remember the description of the lot?

A. No, I have it here.

Q. All right.

A. That is a tax certificate.

Court: What is that—a deed?

A. No, it is a tax list.

Court: A tax receipt?

A. Yes.

Q. The north half of Lot 2?

Court: What section?

Mr. Rankin: It is conceded that the north half of Lot 2, Section 36, Township 2 North of Range 13, East W. M., is owned by Mr. Gulick.

Mr. Bennett: It is not owned by Mr. Gulick, but that is where he lives.

Mr. Rankin: Yes, that is right.

Q. Are you a married man, Mr. Gulick?

A. Yes, sir.

Q. Is your wife an Indian woman?

A. Yes, sir.

Q. What tribe does she belong to?

A. Wasco.

Q. Do you know Wasco Charley?

A. Yes, sir.

Q. Is he living now?

A. No, sir.

Q. What relation, if any, was your wife to Wasco Charley?

A. Brother.

Q. What say?

A. Brother.

Q. He was her brother?

A. Yes.

Q. How long have you lived there on Lot 2?

A. Oh, I have been out there about 25 years.

Q. About 25 years?

A. Yes.

740 Q. Before that time, where did you live?

A. I lived in town.

Q. In The Dalles?

A. Yes, sir.

Q. How long since you first came to that country?

A. I came east of the Cascades in 1858, and I have been around The Dalles ever since; that is, in that vicinity.

Q. Are you acquainted with the Indians, and Indian customs, from the Cascades up to Celilo Falls?

A. I am acquainted with some of them. I am not with all of them.

Q. You mean not all the Indians?

A. No.

Q. Are you acquainted with the Indian customs?

A. Yes, sir.

Q. Now, Mr. Gulick, what is the fact as to where the Indians during those years have been in the habit of fishing, respectively, with relation to the Washington and the Oregon Indians along the river?

A. Well, the Oregon Indians always fished on the Oregon side, and the Washington Indians on the Washington side.

Q. Now, during this time that you have lived there on Lot 2, have any Yakima or Washington Indians ever fished at Three Mile Rapids?

A. Not that I know of.

Q. Well, would you have known it if they had?

A. I would have been very apt to have known it.

Q. What say?

A. I think I would, yes, sir.

Q. Well, did you ever know before you moved there, of their fishing on that point?

A. No, sir.

Q. If any fishing has been done on that point, who did it?

741 A. Well, Wasco Charley. Peter Jackson has fished there, and an Indian by the name of Smioke, and I fished there myself. I am the other Indian.

Q. Now, when did Wasco Charley begin to fish on that point, so far as you know, or if you know? I don't know whether you know or not.

A. No, sir, I don't know.

Q. Well, was it before or since you went there?

A. Oh, it was before I went there. I expect he has fished there 30 years ago.

Q. Did he have any particular place to fish there?

A. Yes, sir.

Q. Where was that place?

A. Well, this Three Mile Rapids, Peter Jackson's scow was laying right in there some place. This has been blown off there since, hasn't it?

Q. As I understand it, the point that has been blown off is out here further. This is just as it is now, as I understand it.

A. He fished right just above that there point, that has been blowed off. It is right in here.

Q. That is where Wasco Charley fished?

A. Yes.

Q. Did he fish at any other point there?

A. Not that I know of. That is where we all fished.

Q. How far is that from this point where Mr. Seufert's fish wheel now lays.

A. Peter Jackson's is about 75 or 100 feet up the river.

Q. And on the same side of this point? Where does Mr. Seufert's fish wheel lay—above or below the point now?

A. Mr. Seufert's fish wheel and Charley's scow lays below this point.

742 Q. Where was Wasco Charley's fishing place, above or below the point?

A. Above the point.

Q. Was there any other Indians ever fished there during that 25 years at any other place on that point, except that one point?

A. Not that I know of.

Q. How frequently have you been there?

A. Oh, I have been there, I couldn't tell you how many times. I have been out there lots of times.

Q. Well, how often? What would you say with reference to the times?

A. That is a question I don't know how to answer.

Q. Could you tell about on the average how many times you would be there, a week or a month, or a year?

A. Oh, some times of late years, I ain't been out there but maybe two or three times a year, because there is no one fishing out there any more.

Q. Well, can you see that place from where you live?

A. Yes, sir.

Q. It is in sight, is it?

A. Yes, sir.

Q. If there was any Indians fishing out there, could you see it?

A. Yes, sir.

Q. Now, then, you say you have fished there?

A. Yes, sir.

Q. How did you fish there at that point?

A. Fished with dip net.

Q. How often have you fished there?

A. Oh, I have fished there three or four years at different times.

Q. Well, but how many times, about, have you fished there?

A. Oh, fished there maybe a dozen times.

Q. In three or four years?

A. Yes.

Q. Peter Jackson, you say you have seen him fish there.

743 How did he fish there?

A. With dip net.

Q. With dip net—when?

A. Oh, it must be four or five years ago.

Q. How many times did you see him fish there?

A. I have seen him there once.

Q. Now, since then, has he been fishing there in any way—Peter Jackson?

A. He has a wheel up there, just on this point.

Court: He has a wheel there now?

A. Yes, sir.

Court: Peter Jackson is an Indian, is he?

A. Yes, sir.

Q. Now, something has been said, Mr. Gulick, about Mr. Sam Williams having fished up in that locality. When did he first come there to undertake to fish anywheres around there?

A. Oh, I guess he has been up there seven or eight years.

Q. Well, where did he fish?

A. He generally fishes with gill net in the river, that is, before he had a wheel.

Q. A dip net?

A. No, sir.

Q. A gill net?

A. Yes.

Q. How did he do with that? Had he a boat?

A. Yes, sir.

Q. And drifted?

A. Yes, sir.

Mr. Randall: Don't lead him, please, Judge.

Q. How did he fish?

A. A set net, and ties it up to the bank.

Q. Whereabouts was his fishing place with a set net?

A. It was out in the river. It was generally down below this here point, towards The Dalles.

744 Q. About how far below this point towards The Dalles?

A. Oh, a quarter or half a mile.

Q. Now, when he came there with a wheel, where did he fish with a wheel? Do you remember what year it was he first fished there with a wheel?

A. I think the first year he fished across on the Washington side.

Q. Well, I am not asking about the Washington side, but when was the first year when he came anywheres in the vicinity of this point?

A. About 1910, he fished—well, he fished out here, and then he fished on my ground in here, right in here somewheres, wherever it is (referring to map).

Q. Now, something has been said about his having a license for a scow in 1910. Was he fishing on your ground then?

A. He fished awhile on my ground, when the water was up high enough.

Q. Where did he fish before that, with his wheel that year?

A. He fished around down here somewheres, I think.

Q. How far from this point where Seufert's fishing wheel is?

A. I think at the same place.

Q. At the same place?

A. Yes.

Q. In 1910?

A. I think so.

Q. How long did he fish there?

A. Oh, he could not have fished there very long, on account of the raise of the water.

Q. Well, then, what did he do with his scow—wheel?

A. Well, he had it down the slough awhile.

Q. What slough?

A. The slough that runs around, well, it forms that island, runs down betwixt the island and the mainland.

745 Q. Is that on your lot?

A. No, sir.

Q. Then where did he go?

A. I don't know where he went to then.

Q. Well, did he fish? What arrangement did he have with you about fishing on your lot that year?

A. He agreed to pay me \$25.00.

Cross-examination.

Questions by Mr. Rankin:

— Mr. Gulick, who owns that north half of Lot 2? In whose name?

A. My wife.

Q. Your wife does?

A. Yes.

Q. You have been there quite a number of years on the river, haven't you?

A. Yes, sir.

Q. You have observed the Indians, I suppose, you have seen, haven't you, seen some of the confederated tribes or bands of the Yakima that live on the north side of the river come over on the Oregon side?

A. Yes, I have seen them come over on the Oregon side.

Q. How about the Wish-ham tribe? Do you know where those people live?

A. Yes, sir.

Q. And the Klickitats, do you know where they have lived?

A. Yes, sir.

Q. Haven't those tribes—those Indians, come over on the Oregon side?

A. Yes, sir, they can come over on the Oregon side, as well
746 as the Oregon Indians can go on the other side.

Q. Yes, I think that is true. Haven't they come over, though? You say they can—haven't they actually come over on the Oregon side?

A. Yes, they have come over.

Q. How long have you observed their coming over, crossing the river that way?

A. Well, they crossed the river every year. Sometimes they crossed there at the ferry and come up.

Q. And what do they do on this side, Mr. Gulick?

A. Well, they don't do anything that I know of.

Q. Do they come over in large numbers or not?

A. No, sir.

Q. Just a few. Don't they fish on the Oregon side of the Columbia?

A. No, sir.

Q. Do you want the Court to understand that you never saw any of the North Bank Indians fishing on the south bank of the Columbia?

A. Yes, sir, that is what I mean.

Q. Are you positive, Mr. Gulick, that you have never seen a Yakima Indian fishing on the south bank?

A. Not that I know of.

Q. But they might have fished there and you not known about it?

A. Yes, they might have fished there and me not known about it. But I never have seen one there that I knew.

Q. I believe you stated in your testimony that you knew something about Peter Jackson. I believe he has fished there, hasn't he?

A. Well, he is a Wasco Indian.

Q. Hasn't Peter Jackson an allotment on the Yakima Indian Reservation?

747 A. He may have an allotment there, but he is a Wasco Indian.

Q. That is to your knowledge, he is a Wasco Indian?

A. Yes.

Q. You don't know what the legal records show as to his status, do you?

A. I know his mother and father, and he was born at The Dalles.

Q. In your opinion he is a Wasco Indian?

A. Well, he would be a Wasco Indian if his father and mother was one, wouldn't he?

Q. Yes. I anticipate that is so. But I am not testifying, Mr. Gulick. I am just asking you for information. You testified that you had been there lots of times that there were no Indians at this particular point in question. You were speaking then of the later years since you have been residing out there on the point, were you not?

A. Yes.

Q. You didn't live in the neighborhood of The Dalles in 1855, I take it.

A. No, sir.

Q. When the treaty was made, you don't know whether that was a usual and accustomed place for the Yakima Indians to fish, or not?

A. No, sir, I was not in the country.

Q. You spoke of Peter Jackson having a wheel at this point. Do you know to whom that wheel belongs?

A. Well, I understand it belongs to Mr. Seufert.

Q. Peter Jackson doesn't have any license to fish there, does he?

A. I don't know who has the license.

Q. You spoke once about Sam Williams' fish wheel scow being down there in the slough. Do you know how it came to be there?

748 A. On account of high water, I think.

Q. When was that?

A. Oh, that must have been three or four years ago.

Q. The time that you speak of as Sam Williams agreeing to pay you \$25, that was not for fishing on this point, was it, where the Seufert scow is now?

A. No, sir.

Q. That was on your own land?

A. Yes, sir.

Q. And Sam paid that, did he not?

A. He paid it, yes.

Q. Did he pay it directly?

A. No, sir.

Q. Who paid you?

A. Mr. Seufert.

Q. As a matter of fact, you have been very friendly with Mr. Seufert all these years that you have resided there, have you not?

A. I am just the same as I am with other folks.

Q. Weren't you manager for Mr. Seufert, or interested in some way for him, in some of his undertakings?

A. No, sir.

Q. Not at any time?

A. No.

Witness excused.

749 HENRY GULICK, recalled for the defendant.

Direct examination.

Questions by Mr. Bennett:

Mr. Gulick, how did Wasco Charley die?

A. He laid out one of them cold nights and froze.

Q. Prior to his death, for some time prior to his death, what were the relations between him and Sam Williams?

A. It was not good.

Witness excused.

750 PORTLAND, OREGON, May 17—2 p. m.

J. C. CRAWFORD, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

Mr. Crawford, whereabouts do you reside?

A. In Klickitat County, right across the river from The Dalles, Oregon-Washington.

Q. What, if any, official position do you hold in Washington?

A. Farmer.

Q. What say?

A. I am a farmer.

Q. Well, I know, but are you a member of the legislature over there?

A. Yes, yes; I am a member of the legislature.

Q. From Klickitat County?

A. Yes.

Q. How close do you reside to the Columbia River?

A. About three miles.

Q. How long have you resided there?

A. 38 years.

Q. What do you say as to being acquainted, or not, with the Indians in that locality, and their customs?

A. I am acquainted with a good many of the Indians in that locality; in fact, most all of them.

Q. How well are you acquainted with the shores up and down the Columbia River there, between Celilo and North Dalles?

A. I am pretty well acquainted.

Court: How far do you live from The Dalles?

A. Seven miles.

Court: Right across the river?

751 A. Yes, it is east, but it is only three miles along the river south of the river to my place. In fact, the place runs down to the river.

Q. You live on the Washington side?

A. I live on the Washington side.

Q. What has been the custom, during the years that you have lived there, of the Oregon Indians and the Washington Indians, as to fishing on the respective sides of the river?

A. The Indians—the Yakima Indians and Klickitats fish on the Washington side of the river. They have fished there ever since I have been there. I never heard of any of them fishing on the Oregon side.

Q. How about the Oregon Indians on the Washington side?

A. I never heard of any of the Oregon Indians fishing on the Washington side.

Q. What are the principal places and the accustomed places of the Washington Indians for fishing along there?

A. They fish at what is known as Five Mile Rapids, and at right opposite Celilo, on the Washington side. The rapids there at Celilo Falls.

Q. Now, what is the Indian name of the Washington side of the Five Mile Rapids?

A. Well, I don't really know. It is usually called Tumwater.

Court: Is that Five Mile?

Mr. Bennett: Five Mile. That is two miles above this point in question.

A. The Indians usually call it Tumwater. It is commonly called that.

Q. Do you know this point that is known as Three Mile Rapids on the Oregon side?

A. No. No, I don't know anything about that.

752 Q. How far is this Tumwater above that point? You know where it is located, don't you?

A. Well, I should judge it is a mile.

Q. How far?

A. A mile to the lower end of those rapids.

Q. The Tumwater Rapid?

A. Yes. Five Mile Rapids.

Q. What kind of a fishing place is that fishing place at Tumwater on the Washington side?

A. Why, it is rapids where the Indians fished with dip nets. The Indians have no other way, or didn't originally have any other way of catching fish, only with dip nets and spears, and hooks and such things. They could not catch them at any other place than swift water, where they would run nearer the shore, with that kind of appliances.

Q. Well, now, do any Indians live there?

A. Yes.

Q. To what extent, as to being a village or otherwise?

A. There is a small village there. I don't really know how many.

I suppose some 15 or 20 at the lower rapids, that is, at Five Mile Rapids, and there is also a village at Celilo Falls.

Q. Now, what is the character of the shore at this Washington fishery, at Tumwater, where the Washington Indians fish, and at Celilo, as to being level with the stream, or gradually sloping?

A. Well, it is gradually sloping.

Q. Now, how are these places as to being good fishing places at all stages of water when the fish are running?

A. Well, I don't know as to that. I don't know as to that. I have never been in the business myself. I have been there a good many times and seen the Indians catching fish, and also the whites.

753 Q. Now, are those places still open and Indians fishing over there?

A. Yes, sir.

Q. Both of them—at the falls of Celilo and at this Tumwater village rapids?

A. Yes, both of them.

Court: Who owns the land at the shore?

A. Well, I don't know as to that. I understand that Mr. Seufert owns part of it.

Court: Are either of those on the land that you own?

A. What is that?

Court: Either of those fisheries on the land that you own?

A. No. No, there is no fishing rights on my property. My property is about half way between the Five Mile Rapids and the Celilo; a little nearer, perhaps, to Five Mile Rapids.

Q. No fishing in any way on your property?

A. No fishing.

Q. Wheels or any way?

A. There was at one time some fishing gear put in there before I owned the property, but I don't know even who put it in. It has all been destroyed, taken out by high water, since then.

Q. And never been replaced?

A. Never been replaced.

Q. Now, this land that belonged to Seufert on the Washington side, was there a way provided there for the Indians to go there to fish?

A. Oh, yes, there is roads there.

Q. How is it up at Celilo?

A. There is roads at Celilo.

754 Cross-examination.

Questions by Mr. Rankin:

— That Tumwater fishery, is that the same fishery that the Winans owned up in there?

A. Yes, sir.

Q. Do you know about the case of the United States v. Winans?

A. No; no, I don't much.

Q. Mr. Crawford, how old a man are you?

A. 48.

Q. How long have you lived upon the Columbia River there?

A. 38 years.

Q. You don't remember anything about a treaty of 1855?

A. No, that is before my time.

Q. Any of the old rights or Indian places?

A. That is before my time. I wasn't there.

Q. When did you first begin to observe Indians on the river, Mr. Crawford, in your memory?

A. Well, ever since I came there, so far as that is concerned.

Q. About what year was that?

A. Well, that is 38 years ago.

Q. 38 years ago. Were you just a boy there?

A. Yes, about ten years old.

Q. Did you observe whether or not the Indians were fishing on the river then?

A. The Indians were fishing on the river at that time.

Q. You were old enough so that that was called to your attention and you remember it?

A. Oh, yes, yes.

Q. Did you observe what tribes they were?

A. They were the Klickitats and Yakimas.

Q. Do you know whether or not they crossed over or not, Mr. Crawford?

755 A. Never heard of any crossing over to fish on the Oregon side—never knew of any.

Q. They might have crossed over, and you not know it?

A. Oh, they could have done it, but then I perhaps would have known something about it, if it had been carried on extensively. I would have been most likely to know it.

Q. What is the situation, Mr. Crawford, about the Indians fishing there in recent years? Have they had the same rights that they had formerly, if you know?

A. They fish there unmolested as far as I know, with the dip nets. I never knew of them being disturbed.

Q. Did you know of their being disturbed at the time that the case of United States vs. Winans was called up?

A. Well, no, I didn't. I didn't pay any particular attention to it.

Q. Then they might have been disturbed as they were in that instance, and you not know anything about it?

A. Well, they could have been, but I don't think to any great extent.

Q. You didn't know anything about the Winans case?

A. No, I am satisfied they have never been stopped from fishing there.

Q. You just said you didn't know anything about the Winans case.

A. I didn't know anything about it, only just simply what I have heard.

Q. Well, then, my question was this, Mr. Crawford: That there might have been other disturbing features regarding the Indians'

rights to fish there, and you not know about it any more than you knew about the Winans case; isn't that the truth?

A. Oh, yes, it could have been.

Q. How far back from the river do you live, Mr. Crawford?

756 A. Three miles. That is, three miles north—about three miles north from the river, although my place runs down to the river.

Q. Yes, but you don't live where you can see the river?

A. No. I am there, though, two or three times a week, on the river.

Q. On the river?

A. Yes.

Q. I believe you stated you didn't engage in fishing?

A. No.

Q. What is your principal business?

A. Farming.

Q. Have you ever engaged in fishing?

A. No.

Court: Do you know anything about the habits of the Indians, as to whether they cross the river there about Three Mile Rapids, or above there, at any place?

A. I don't think they can cross there.

Examination by the Court:

Q. Can't they cross with skiffs?

A. I don't think so. They might, with low water, but I don't think at this stage of the water they can cross there at all with small boats. At Three Mile Rapids, I am satisfied they cannot.

Q. Well, at any time when they can cross, do you know the habits of the Indians?

A. Possibly they might cross there at low water. I don't know as to that. But at this time of the year, it is about all the steamboat can do to make it up there, and I don't know whether they can or not. The water is very swift and rapid. I don't think they can cross there at all at Three Mile Rapids in a small boat.

Q. Well, at any place where they do cross, or where they can cross,

757 A. They cross at The Dalles. There is a ferry across. Indians pass back and forth there at all times every day.

Q. Isn't there any place where they can cross above there, between that and Celilo?

A. Yes, sir; they can cross above Five Mile Rapids, between there and Celilo, at several different places.

Q. What I ask is, do you know anything about the habits of the Indians of the Wasco tribe, crossing back and forth?

A. No, I don't know. I don't know of any crossing back, only on the ferry boat at The Dalles. I don't know of any crossing the river there, only at The Dalles.

Q. You know nothing about the habits of the Indians?

A. Well, in fact, I don't think they have been crossing only on the ferry.

Q. Did you know about former years, say 25 years ago?

A. Never knew of any.

Q. Never knew of them crossing in small boats there at the Three Mile Rapids, or above there, wherever they can cross?

A. No.

Cross-examination continued.

Q. Were you in court this morning and heard Mr. Laughlin's testimony, Mr. Crawford?

A. I heard part of it.

Q. Did you hear that portion where he did testify that the Indians crossed above Three Mile Rapids?

A. Yes.

Q. You don't want the Court to understand that they cannot cross above Three Mile Rapids?

758 A. I don't think—well, now, I doubt that they can cross at Three Mile Rapids. When they get above Five Mile Rapids—

Q. We are speaking of just above Three Mile Rapids.

A. I don't think so. I don't think they can cross there at this stage of the water. They possibly could at low water. At this stage, from now on up till June, I doubt very much whether they can cross there with small boats.

Q. That is your opinion?

A. That is my opinion.

Witness excused.

759 JOHN CRATE, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett.

— Mr. Crate, where do you reside?

A. At The Dalles.

Q. What official position do you hold in The Dalles?

A. Police officer.

Q. How long have you been police officer there?

A. About 14 years.

Q. When did you come to The Dalles?

A. In 1850.

Q. What time?

A. 1850.

Q. In 1850?

A. Yes.

Q. How old were you then?

A. About two weeks old, I guess.

Q. About three weeks old?

A. Three weeks old.

Q. Where have you lived since that time?

A. I lived at The Dalles.

Q. Was your father an old Hudson Bay man?

A. Yes, sir, he was one of the old Hudson Bay men.

Q. During the time that you lived at The Dalles, have you been acquainted generally—have you been acquainted with the Indians in that country?

A. A good deal in early days, yes.

Q. What say?

A. Yes, I was a good deal in early days, when I was young. Well, always, you might say.

Q. Were you able to talk jargon?

760 A. A little bit; not much.

Q. Were there many white people in that country in those early days?

A. No, sir; there were very few people. My father was one of the first men that settled at The Dalles.

Q. One of the first white men to settle up there?

A. Yes, sir.

Q. Now, are you acquainted with the customs of the Indians in that locality during those years?

A. Some, yes.

Q. Now, what was the custom of the Washington Indians and the Oregon Indians as to fishing on the respective sides of the river?

A. Well, in them early days, the Washington Indians wasn't allowed to fish on the Oregon side. That is what these Indians used to always say, they were not allowed to fish on the Oregon side.

Q. How about the Oregon Indians on the Washington side?

A. Well, they wasn't—they was supposed to fish on the Oregon side.

Court: Who prohibited them from fishing on the other side?

A. Well, it was between the two tribes, between the Warm Spring and Cayuse—these Warm Spring particularly,—I don't know much about above—and the Klickitat and Yakima Indians. They used to have a good deal of trouble in the early days, the two tribes amongst themselves.

Court: With the Indians between one another?

A. Yes, sir.

Q. In what way?

A. They used to have trouble. These Klickitat and Yakima Indians used to go over there generally, and kidnap some of the young Indian women, young girls, and take them over there. There is where the trouble used to be.

761 Q. Do you remember the time of the war between the whites and the Indians?

A. Yes, sir, I do.

Q. That was in 1855 and '56?

A. Yes.

Q. What Indians were at war with the whites then?

A. Well, it is supposed to be the Klickitat and the Yakima Indians.

Q. And what was the relations between the whites and the Oregon Indians during that time?

A. Well, we always called the Warm Spring Indian the Oregon Indian, they were supposed to be on good terms. The Warm Spring was always friendly to the white.

Q. How about the Wascos?

A. Well, I don't know much about the Wasco. At the time they were around near The Dalles there, the Indian was always friendly to the whites.

Q. Do you know whether the Wasco and Warm Spring Indians fought with the whites, or not, in that war, any of them?

A. I think they did. The Wasco had to fight, you know. They massacred there, the Whitman——

Court: Did the Wascos take part in that?

A. Yes, I think so. Wasn't the Wasco there at Walla Walla—the Wasco Indians?

Court: Well, do you know about that?

A. Well, that is just what I have heard of. Of course, I haven't seen them.

Court: That is only tradition?

A. Yes.

Court: You were then how old?

A. Between five and six years old.

Court: Didn't know very much about it?

762 A. I knew enough to remember when we had to move away from our place and my father was out towards the fort, he had to go back there to watch the house, and the Indians burned the building of a man by the name of Osburne, I think it was, right across the river. We could see the Indians while they was burning the building, running around on horseback. So they moved the folks up between our place—we lived about four miles below The Dalles; the fort used to be there. He came back to watch they didn't burn up the building. My brother, the oldest one, was with him. When he came down to the river, he heard the Indians coming across, so he fired a couple of shots. That scared them—they went on back. I remember that well, as well as if it was yesterday. I think I wouldn't forget that.

Court: You were pretty badly scared?

A. I don't know whether I was scared or not. I know we had to move away from the house two or three times, and hide in the willows there.

Court: I don't think that has very much to do with this case.

A. You are asking me a question. I am telling you.

Mr. Bennett: What is that, your Honor?

Court: The history he is giving of that local trouble.

Mr. Bennett: My idea was that it bore upon the question of whether these Indians would be passing back and forth.

Court: If the two tribes were unfriendly, that would have some bearing upon it. These local details, I think it is taking up time of the court without much result.

Q. Now, when you were a boy, to what extent were you up about the fishing grounds—up along between The Dalles and Celilo? And from that time on?

763 A. I used to go up there a good deal and watch them fishing, watch the Indians fishing.

Q. And do you know this Three Mile Point—Three Mile Rapids?

A. Yes, sir.

Q. What do you say as to whether the Indians crossed in canoes at that point, in the fishing season?

Mr. Rankin: The testimony wasn't that they crossed at that point; that they crossed above there.

Mr. Bennett: Crossed and landed on that point.

Mr. Rankin: Yes, they crossed above there, and landed on that point, is the testimony.

Q. What do you think about that?

A. I think at the stage of the water, the way it is now, they could not cross very well, but at low water I guess they could; but I don't believe I ever saw any of them cross, and I don't think they can cross at the stage of water it is now at this time of year.

Court: This stage of water doesn't last very long.

A. Well, from now on, till, you might say, the first of July, is generally high water.

Q. When is the fishing water there, in low water or high water?

A. It is generally in high water.

Q. Now, did you ever know of any Yakima Indians ever fishing on that point, at Three Mile Rapid?

A. No, sir.

Cross-examination.

Questions by Mr. Rankin:

764 Which fishing season on the Oregon side of the river—when did you say that was, with respect to the water, the high water or low water?

A. The high water.

Q. Why, can you fish against the point out there? Do you know Three Mile Point, or Lone Tree Point?

A. Yes, sir.

Q. Do you want the Court to understand that you can fish off Lone Tree Point in high water?

A. I don't know anything about that, much, but I know they are fishing up in there.

Q. You testified a moment ago that they fished there in high water. Do you recognize this map? To refresh your memory, this is Lone Tree Point (referring to map). That is the point where the Government blasted off some two years ago. Do you know about that?

A. Yes.

Q. Do you want the Court to understand you can fish out there in high water?

Mr. Butler: I want to object to that, continually asking the witness whether he wants the Court to understand. It is a question of what the fact is. I don't think it is fair.

Court: This is cross-examination.

Q. Do you want the Court to understand you can fish off that point in high water?

A. I don't know how it is now. I haven't been there for a long time.

Q. Any time, any time in high water?

A. They used to fish there. I don't know how high water it was, in early days; but where generally the most fishing was, it is above.

Q. When did they fish there in high water?

A. Along about May and June.

Q. Is there high water there in May, the early part of May?

765 A. Yes.

Q. Fore part of May, or latter part of May?

A. I couldn't tell you just what part, exactly.

Q. What years did they fish? How high was the water there? Was it just up to the rocks?

A. I couldn't tell you that, just how high it was.

Q. How do you know it was high water? What do you mean by high water?

A. I mean by high water, we generally have high water along about that time of year, out in that vicinity.

Q. Does the water of the Columbia River ever run over that point out there?

A. I couldn't tell you that. Yes, it has been running over.

Q. It has run over, has it?

A. Yes.

Q. They didn't fish when the water was running over, did they?

A. No, not when the water was running over.

Q. Mr. Crate, isn't it a fact that the Indians fish on the Oregon side in low water?

A. Well, they might fish there in low water.

Q. But didn't they cross over above there in low water time?

A. I don't know. They might.

Q. They might have done so?

A. They might.

Q. Have you ever observed them crossing there?

A. No, sir.

Q. Did you ever watch to see if they did cross?

A. No, sir.

Q. You never took that into your personal knowledge?

A. No, sir.

Q. You were born in 1850, I understand, Mr. Crate?

A. Yes, sir.

Q. What month in the year?

A. April 26th, down here in Oregon City.

Q. Down here in Oregon City?

A. Yes, sir.

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Q. When did you move up to The Dalles?

A. As I said before, when I was between two and three weeks old.

Q. Then a large part of your testimony, outside of your personal experiences, about the war and the early situation up there at The Dalles, is tradition—what you have heard people say?

A. Well, not only what I heard. I know. I can remember well.

Q. In 1855 you were five years old, weren't you?

A. Yes, I was five years of age; between five and six.

Q. Do you remember whether or not the Indians crossed over there when you were five years old?

A. Crossed where?

Q. Up above.

A. Oh, I don't know anything about whether they crossed up there then. I wasn't there.

Q. You don't know anything about the Indian customs at that time?

A. No, no.

Q. Now, you spoke about trouble between the Klickitat tribe, I believe, and the Wascos.

A. Yes, sir.

Q. Do you know what territory the Wascos occupied?

A. Well, I mean the Warm Spring, on the Oregon side, the Warm Spring it is.

Q. Is the Wasco tribe the same as the Warm Spring tribe?

A. I guess maybe they are. I guess they are, but they live up above, you know, Umatilla, up in that country.

Q. You think the Wasco and the Warm Springs are the same tribe?

A. Well, I don't know whether they are or not. I couldn't tell whether they are the same tribe or not.

Q. Well, then, go back to my first question, Mr. Crate. What territory did the Wascos occupy?

767 A. Well, Umatilla County, up in there.

Q. Umatilla County?

A. Yes.

Q. Did they go on up to Walla Walla?

A. Yes, I guess they went up through there.

Q. Well, now, Mr. Crate, as a matter of fact, wasn't that the Cayuse tribe that occupied all that Walla Walla country?

A. Cayuse?

Q. Yes.

A. Well, just the same Cayuse or Wasco. They are different tribes, I guess.

Q. To your mind the Wasco and the Cayuse tribe are one and the same?

A. Yes, I think they are just the same.

Q. Well, how about the Umatilla tribe? Didn't they occupy down on the Umatilla River?

A. I guess they did.

Q. Was that the same tribe that you speak of as being the Wasco?

A. I think it is the same tribe.

Q. Same tribe. Now, it was these Cayuse and Umatilla tribes that were unfriendly with the Yakima, was it not?

A. Well, I don't know. I knew the Warm Spring was.

Q. You spoke about coming over and kidnapping the girls.

A. Yes.

Q. As a matter of fact, didn't those tribes visit back and forth and intermarry?

A. Well, they used to get over, you know, get over on the Oregon side, and they were out generally, them days the Indians used to go out after berries and roots in the spring of the year, and I have heard them talk about it, and know about it, that that is where they had their trouble.

Q. Well, didn't the Klickitats, for instance, go over and gather berries on the Wasco side?

A. Klickitats?

Q. Yes.

A. Well, I don't know whether they go over there to gather berries, but they used to go over there, and that is where, as I told you before, they used to kidnap the young children from over there.

Q. Well, did they kidnap, or did they intermarry?

A. No, as the Indians said, they stole them; they just threwed them, and took them over on their side.

Q. Wasn't that the Indian method of intermarriage, rather than any trouble arising out of that?

A. I don't know anything about it.

Q. As a matter of fact, Mr. Crate, a good deal of your testimony is what you have understood about the situation up there, rather than your personal observation?

A. No, it is personal. I remember it.

Q. Did you ever see them kidnap any of those girls?

A. No, but I seen where they come right there at the house and told about it.

Q. Told about it?

A. Yes.

Q. Who told about it?

A. Indians told it to my father.

Q. What Indians?

A. The Warm Springs Indians.

Q. They told you about it?

A. Yes, told my father about it. And I heard them talk about it. There was some Indians stole a——

Court: Is your father alive?

A. No, sir; he is dead; been dead 20 years.

769 Q. Do you know, Mr. Crate, whether or not there is a Warm Spring tribe?

A. Eh?

Q. Is there an Indian tribe called the Warm Springs?

A. Yes.

Q. Where do they reside?

A. Warm Springs.

Examination by the Court:

Q. I understand you to say you fished out there in low water.

A. I fished?

Q. Yes.

A. No, I didn't fish.

Q. I thought I understood you to say you fished yourself in low water.

A. No, sir, I didn't fish.

Q. What did you say about them fishing there in low water?

A. I said I had seen them fishing there.

Q. Have you seen them fishing at this point in low water, called the Lone Tree Point?

A. Not exactly low water; about the middle stage water.

Q. Whom did you see fishing there?

A. The Indians.

Q. The Indians?

A. Yes.

Q. Did they fish there in considerable numbers?

A. Well, they fished with these dip nets, you know.

Q. At this point?

A. Yes.

Q. Did they fish there every year?

A. I don't know about that. I wasn't there every year.

Q. Well, did they have a place on the shore for drying their fish?

A. Yes, sir, they had.

Q. At this particular point?

A. Yes, sir.

770 Q. They used that, then, as an Indian fishing ground?

A. Well, I suppose they do. They usually dry their fish some place.

Redirect examination:

Q. What Indians was it you saw fishing there, Oregon Indians or Washington Indians?

A. Oregon Indians.

Recross examination:

Q. How did you know them to be Oregon Indians?

A. Well, I knew them. I knew they were Warm Spring Indians.

Q. Mightn't there have been some Yakima Indians there?

A. I don't know.

Witness excused.

771 FRED SMITH, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination:

Questions by Mr. Bennett:

— How old are you, Fred?

A. 36 years old.

Q. Where were you born?

A. Grand Dalles, Washington, just across the river from The Dalles.

Q. On the Washington side?

A. Yes, sir.

Q. Are you a son of George Smith, who lived over there?

A. I am, yes sir.

Q. What business are you engaged in?

A. I am a farmer. I have got a few sheep and cattle and horses.

Q. A sheep farmer?

A. Yes, a little of everything.

Q. During the time that you have lived there, have you been acquainted with the fishing grounds on the Columbia River, on the Washington and Oregon side?

A. Not so much on the Oregon as the Washington side, although I have been up and down both sides of the river.

Q. Are you acquainted with the Indians along up and down the river there?

A. Quite well, yes.

Q. Do you know their customs?

A. To a certain extent, yes.

Q. What was the custom of the Oregon and Washington Indians as to fishing on their respective sides of the river?

A. All that ever I have noticed, I understood it is that way,—the Yakima and the Klickitat Indians as we have them, fish on the Washington side of the river, and the Warm Spring or Umatilla Indians, I call them—I don't know whether that is right or not—fish on the Oregon side.

Q. Where were the accustomed places of the Washington Indians to fish in that country?

A. At the Five Mile Rapid.

Q. Five Mile Rapid?

A. Yes, along the banks.

Q. Do you know where the Three Mile Rapid is, the point extending out from the Oregon side?

A. I do.

Q. How far is this Five Mile Rapid above Three Mile Rapids?

A. Well, there is only a little distance between the two rapids. I don't know as I could tell exactly—probably half a mile. That is, it is not all smooth water for that distance—it is more or less rapids all the way through. It is all swift water all the way through.

Q. Well, now, have the Washington Indians any other place to fish besides Five Mile Rapids?

A. Yes, they have another place up at what we call Fall Bridge or Celilo Falls.

Q. Up at Celilo Falls?

A. Yes.

Q. Now, what kind of fishing places are these?

A. At the Five Mile Rapid, they use dip nets and spears. Up at the Celilo Falls they use both dip nets and spears, and there is some seine bars, but whether Indians use those, I don't know. I never saw them with seine net.

Q. You never saw Indians using the seine nets?

A. No, sir.

Q. How about dip netting and spearing,—have you seen them do that?

773 A. Yes, sir.

Q. How are these as to being good fishing places?

A. I am no judge of a fishing ground, but I have seen them catch lots of fish there.

Q. Where is the earliest place of fishing on the river along between The Dalles and Celilo?

Mr. Rankin: If you know.

A. I don't know. I couldn't say the earliest places. I think, though, about the first place I see them catch any fish is along about the Five Mile Rapids.

Q. Now, how long does the fishing last there?

A. For the Indians?

Q. Compared to other places, there and at Celilo?

A. There I couldn't say compared to other places. The Indians catch them there pretty near the year around.

Q. They do catch them there pretty near the year round?

A. That is one way or another.

Q. Are there different channels as the water raises and recedes at these places?

A. Not right in that particular place there are not any different channels. It is all in one channel, but the banks are in a shape that they can get down on benches as the water drops, or up as the water raises.

Q. How is it up at Celilo?

A. It is a little different there. It is in some places about the same, but just below there is bars, sand bars. The rocks, though, out in the rapids are a good deal the same, but it runs across the river, in place of up and down with the water.

Q. Some witnesses testified here to Indians crossing to the point at Three Mile Rapids. What do you say as to whether that is customary or not. For the Indians to cross there during
774 the fishing season?

A. It is not customary at any time. There has been Indians drowned there that has tried it, that I know of, in the last, well, I should say, five or six years. Maybe I am wrong a year or two.

Q. Then what do you say as to whether it would be possible to

cross there and land on that point? To cross above that point, or at the point, either at or above the point; that is, I mean in the vicinity, and land on that point at the stage of water when it would be fishing?

A. I don't think it would be practicable at all. I have a telephone line that crosses just below there, and in this stage of water, we cannot get up there with a boat to string our wire if it is broke, as is the case with us now.

Cross-examination.

Questions by Mr. Rankin:

— Your principal business is sheep raising, isn't it?

A. Well, not principal, no. I am mixed up in cattle and hogs and sheep—some farming.

Q. Did you ever do any fishing on the river?

A. No, sir, I am no fisherman, salmon fisher.

Q. Did you ever have any interest in any fishery on the river?

A. No, sir.

Q. Now, you say you understood that the Klickitats fished on the Washington side, and the Wascos, or you call them Umatillas, fished on the Oregon side. That is simply hearsay on your part, is it not?

A. From the Indians, yes.

775 Q. You never observed that, of your own knowledge?

A. I have.

Q. And what has your own knowledge been upon it?

A. My own knowledge is that any of those Klickitat Indians that I know never go across the river to fish, or the Umatilla Indians or Warm Springs, as we call them, doesn't come over to our side of the river.

Q. You know that of your own knowledge?

A. I do.

Q. Then why did you say you understood it?

A. I say I understood that, because I have talked to the Indians about those things.

Q. It is hearsay from the Indians?

A. Yes.

Q. You never observed them?

A. I have noticed those things, yes, sir.

Q. Did you ever see any of the Washington Indians on the south side of the river?

A. Yes, sir.

Q. Klickita's?

A. They go over there quite frequently,—every day, go into The Dalles. That is their trading place.

Q. Did you ever see them fish on the south side of the river?

A. Never did.

Q. Now, you don't know anything about that river situation, or the customs of the Indians prior to about 1885, do you, Mr. Smith?

A. No, sir.

Q. What you testify to has been limited to the last few years, within your knowledge?

A. Not the last two years, no, sir.

Q. The last few years.

A. Well, yes, it may be the last 20 years.

776 Q. Your holdings are quite extensive on the Washington side, are they not, Mr. Smith?

A. Yes, I suppose some people call it that.

Q. You have had considerable trouble with the Indians over on your side?

A. No, sir.

Q. Haven't you a large berry patch on your lands?

A. No, sir.

Q. Haven't any berry patches at all?

A. No, not on my lands. I have a permit on the Forest Reserve that has a berry patch on it that the Indians has bothered a little about, but never made me no trouble.

Q. Don't you feel that the Indians should stay back on the Reservation, rather than come down on the river?

A. No, sir, I do not.

Q. You haven't talked that way about it?

A. Not a bit. The Government furnishes me that range there. If I don't get grass enough there, they have to give it to me somewhere else. Not necessarily have to,—they sell it to me.

Q. You mentioned some Indians being drowned crossing there. Who were they?

A. It was some of Bill Charley's people.

Q. You wouldn't know their names?

A. No, I could at one time have called their names, but I cannot new.

Q. Whereabouts on the river were they drowned?

A. Just above the Three Mile Rapids.

Q. Just about above?

A. I couldn't tell you just where.

777 Q. Do you recognize this place in here? Do you recognize that as the point that was blasted? You knew the Government blasted off some?

A. Yes, sir.

Q. You recognize that as the point?

A. Yes, sir.

Q. This is on down the river here (referring to map).

A. Yes, sir.

Q. Do you remember this long sweep coming up in here? Kind of long slough. Do you recall that?

A. Yes, sir.

Q. Whereabouts is the place where they attempted to cross shown here?

A. Would this be the river above the point?

Q. Here is the point here, yes. Mr. Seufert's place is about off here. The river comes down this way, and flows over those rocks, two or three miles going on down.

A. It was just above here somewhere. I couldn't recognize just the place.

Q. As a matter of fact, can't you come with a boat here, and land on this shore anywhere over here?

A. Not at this stage of the water would I think it is practicable.

Q. Why not at this stage of the water?

A. Too swift—too many whirlpools.

Q. Are those rocks all through here covered?

A. No, sir, not now.

Q. Not now. What time are they covered?

A. Well, I don't think that I ever seen them all covered except once.

Q. Well, then can't you land on those rocks if they are not covered?

A. You can at places, yes, sir; if you were there in a boat, you could land on them.

778 Q. As a matter of fact, can't you come right down here and land on this shore along here?

A. Out in this slough, you mean?

Q. Along on the shore of the slough. Come right down through the slough. Can't you land on this point running out there; not the particular one, but the larger point?

Mr. Bennett: You mean come across the river and land?

Mr. Rankin: Yes.

A. No, sir. I don't think it is practicable.

Q. Couldn't you do it at low water?

A. Yes, at low water you might get across there. I think, as a matter of fact, it was in low water those Indians were drowned.

Q. Isn't there a sandy patch where you can run a boat up?

A. Not until you get below this point.

Q. No sandy patches along this side here?

A. Not that I remember.

Q. Haven't you seen Mr. Seufert's launches come right down there and land on this point running out here?

A. No, no, sir.

Q. You know that—

A. I know I never seen his launches come down there and land.

Q. Would you say you cannot do it?

A. No, I wouldn't say you cannot do it. There has been boats went through the Five Mile Rapids, but they never went through with any safety.

Q. At low water, there is none of this point covered, is there?

A. It is covered down to low water mark.

Q. I mean, from up here the shore line, the bank back here where the Indian village is,—you know where that Indian village is?

A. Yes.

779 Q. Clear down to this point the water is not over any of that rocky point there, is it?

A. Not at low water, no, sir.

Q. You still don't think at low water you could come down and land on this shore line; is that your testimony?

A. With safety, yes, I said. There has been boats came through there.

Q. Came through where?

A. Through the whole rapids, clear through.

Q. I didn't mean the rapids, Mr. Smith. I mean over on this side of this slough.

Court: He was talking about crossing the river at that place.

Q. Yes, I am talking about coming down here and landing on this short line of this slough.

A. On the Oregon side? Coming from the Washington side and going to the Oregon side?

Q. Yes.

A. No, sir, I don't think so.

Q. Isn't there some sandy beach up further here somewhere? You know where Jake Andrews' scow used to be?

Mr. Bennett: You mean on the Washington side?

Q. On the Washington side.

A. No, there is no sandy beach there.

Q. How about up at this point?

A. There is probably one place called the Big Eddy, probably 30 feet across. A man can get out through the bluffs. It is not sand, though probably a little sand drifted in there, but very little.

Q. Did you notice whether Jake Andrews' scow was moored in there last summer?

780 A. No, I wouldn't know Jake Andrews' scow from any other.

Q. Was there any scow there at all?

A. I have seen scows all along. Not in that place, no.

Redirect examination.

Q. What kind of whirlpools are those in high water, and medium high water, at the fishing season? Can you give the Court some idea of what those whirlpools down through those rapids are like?

A. I don't know—the water comes down and wirls around; finally it will come into a center, and break out somewhere else again in another place.

Q. Are they big whirlpools or little?

A. Yes, some of them are small, and some are large.

Q. Do they make a cavity of the water, or not, where the center of the whirlpool is?

A. Yes, sir.

Q. Do you know how deep you can see down in those whirlpools?

A. No.

Q. You don't know about that?

A. No.

Court: Do you know whether that point of Three Mile Rapids on

the Oregon side is used by the Indians to fish?

A. No. I never seen any Indians there fishing at all.

Court: You don't know about that then?

A. No.

Court: You don't pretend to?

A. I have seen a wheel there in the last two seasons, and that is all the fishing that I know of that has ever been there.

Q. (Redirect:) You don't know to whom that wheel belonged, Mr. Smith?

A. No, sir, I don't.

Witness excused.

781 CHARLEY SWITZLER, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

. Direct examination.

Questions by Mr. Bennett:

Q. Where do you live, Charley?

A. At The Dalles.

Q. Right at The Dalles or up above?

A. Above The Dalles.

Q. How far?

A. Three miles, about.

Q. Of what blood are you, Charley?

A. Wasco, part of it.

Q. And the other part?

A. German, I guess.

Q. I won't ask you how your sympathy in the war is.

A. I don't want to say anything either way.

Q. Where were you born?

A. In Oregon.

Q. Whereabouts in Oregon?

A. Down here at Vancouver, across from Vancouver, on the Oregon side.

Q. How did you come to be born there?

A. Why, we just came down for a trip, and we got caught that winter, and can't get up there. We was in a canoe. That spring I was born, and they got up and went back to the Cascades.

Q. Where did your mother live at that time? Where was her home, I mean.

A. At the Cascades.

Q. At the Cascades?

A. Yes.

Q. One the Oregon side or the Washington side?

A. On the Washington side.

Q. And where were you raised—with your mother or your father?

A. My mother.

782 Q. You say she was a Wasco Indian?

A. Yes.

Court: You lived on the Washington side?

A. Well, my mother she moved down, she went down to the Cascades, and she got married there and she stayed. She stayed with her husband.

Court: That is on the Washington side?

A. Yes.

Q. Did she continue to stay there?

A. I guess so.

Q. Were you raised on the Washington side or the Oregon side?

A. Well, I was raised there at the Washington side part of the time.

Q. What say?

A. I was raised at the Washington Cascades.

Q. When did you go to The Dalles?

A. The year of 1894 after that high water.

Q. And what business have you been engaged in since that time?

A. Fishing.

Q. Whom were you fishing for?

A. Mr. Seufert.

Q. Where were you fishing for Mr. Seufert?

A. Fishing at Two Mile Point.

Q. At Three Mile Rapids?

A. Yes, sir.

Mr. Rankin: He said Two Mile Point.

A. Two Mile. First when I went to The Dalles, I worked for Mr. Seufert on dry land in the summer time. In the winter time, I go back to the Warm Spring, where my wife has rights. After this I went to work and fish for Mr. Seufert. He furnished me a scow, fish wheel, I guess, on Two Mile Point, since the last summer.

Q. Well, do you know the point where the Oregon shore extends out into Three Mile Rapids?

783 A. How is that?

Q. Do you know the point where the Oregon shore extends out into Three Mile Rapids? Do you know the point in controversy between Mr. Seufert and Sam Williams?

A. Oh, that is the point.

Q. I want to know if you know that point?

A. I know the point, yes.

Q. And now, where were you fishing for Mr. Seufert with reference to that point?

A. Well, I fished a little below that point.

Q. A little below that point?

A. Yes. Where is the point at?

Court: This is the point here.

A. That is the point. Yes, I fished about here some place. This is around this point. Here is Peter Jackson's, here some place right here.

Q. Now, what year did you first fish for Mr. Seufert?

A. The year 1914.

Q. 1914?

A. Yes, sir.

Q. Have you fished in the river before that, in any way along there in that country?

A. Around The Dalles?

Q. Yes.

A. No, sir.

Q. Or around this point?

A. No, sir.

Q. Now, are you acquainted with the customs of the Wasco and the Warm Springs Indians since 1894, and the Washington Indians, in relation to the fishing rights? Do you know the customs—that is the first question.

A. Now, I don't know much about this general custom, but I know about Wasco.

784 Q. You know about the Wasco?

A. Yes, sir.

Q. Well, do you know what the custom was as to the Oregon Indians and the Washington Indians, as to which side of the river they fished on?

A. The Wasco Indians and the Yakimas?

Q. Yes.

A. The Yakima Indians they fished on the Washington side where they belonged.

Q. Where did the Wasco Indians fish?

A. They fished where they belonged, on the Oregon side.

Q. Where was that?

A. On the Oregon side.

Q. On the Oregon side?

A. Yes, sir.

Q. Where was the usual and accustomed places of fishing for the Washington Indians, the Yakimas?

A. Where was they?

Q. Where was their accustomed place to fish? Whereabouts on the river?

A. Well, away up here. That is the Washington side?

Q. Yes.

A. Right up here.

Q. Where do they fish?

A. Right up here at Five Miles, opposite Five Mile. That is the only place they got—opposite Five Miles.

Q. How was it about Celilo?

A. I don't know anything about Celilo.

Q. You wasn't up there much?

A. No.

Cross-examination:

Questions by Mr. Rankin:

785 Q. You are a Yakima Indian, too, aren't you, Charley?

A. I have got allotment there.

Q. You have an allotment there?

A. Yes, sir.

Q. Born on the Washington side?

A. Born on the Oregon side.

Q. I thought you said a while ago you were born on the Washington side?

A. No, I didn't say I was born on the Washington side. I said I was born on the Oregon side, across from Vancouver. Vancouver is on the Washington side. I was born in Oregon.

Q. How many years have you been in Mr. Seufert's employ?

A. Ever since the year 1894.

Q. You are very unfriendly to Sam Williams, aren't you?

A. Yes, sir, once.

Q. Well, you are unfriendly at all times, aren't you?

A. Since we have been—I have been over Warm Springs part of time; never been with him since.

Q. Whenever you are over on the river, you are unfriendly to him, though?

A. Sure.

Q. You are one of the party who went down there and cut his scow loose, aren't you?

A. No, sir; there was nobody cut his scow loose.

Q. Nobody ever cut his scow loose?

A. No, sir, not cut it.

Q. Didn't they cut the cables?

A. No, sir.

Q. What did they do?

A. Turned it loose.

Q. You mean to draw the distinction between cutting the cables and untying the ropes?

786 A. Untied the ropes.

Q. You untied the ropes, didn't you?

A. I did not.

Q. Who did?

A. One of Mr. Seufert's employes.

Q. Who?

A. Well, I couldn't remember the names.

Q. Don't you know those men pretty well?

A. The old men?

Q. Don't you know those men that Mr. Seufert employed pretty well?

A. Yes; yes, sir.

Q. You know it was Hank Wickman went down there?

A. Yes, I understand now what you mean.

Q. You knew it was Guy Whipple went down?

A. Yes, sir.

Q. You know you were one of those parties that went out there?

A. That I was with them?

Q. Yes.

A. No, I was on the shore, but they was went on the scow.

Q. You were in Mr. Seufert's employ at that time, were you not?

A. Yes, but wasn't with them when they turned it loose.

Q. You went out there to help them turn it loose, didn't you?

A. No, sir. I helped them bring up the boat so they can go. I brought the skiff, the rowboat. It was on the little island where the scow was.

Q. Where did you land when you came down to turn the scow loose that time? Where did you land?

A. Did I land my rowboat?

Q. Yes.

A. Why, these is all rocks.

Q. Yes, that is the rocks. That is the point out there. Here is the slough that runs around up in here.

787 A. Well, I landed up by here somewhere.

Q. Landed right up next to the scow?

A. Right opposite the scow.

Q. Right opposite the scow?

A. Yes.

Q. On the Oregon side of the river?

A. On the Oregon side of the river.

Q. That is too swift to land in there with a row boat?

A. It is not swift when the river is raising—it is all islands, you know, dead water.

Q. Isn't it pretty dangerous to land in there when the water is low?

A. No.

Q. How about when the water is high?

A. When this point is covered up, it is dangerous.

Q. When you landed there to turn that scow loose, it wasn't covered up much, was it?

A. It wasn't covered up much—the river was raising.

Q. Can you also land up in here, if you want to?

A. Land?

Q. Come in with a boat, and land on this shore of the slough.

A. There ain't no slough there. It is all Columbia River.

Q. All right, Columbia River. You know where that river comes away back here—the land runs up to this point?

A. Yes.

Q. Can't you land anywhere you want to, in low water?

A. Not at this time of year.

Q. Low water?

A. Low water, lowest in the fall, in the river.

Q. You can land along in September, can't you?

A. Yes, sir.

788 Q. Do you know when I was up there last September?

A. I don't know when you was up there.

Q. You didn't see me there then?

A. No, I didn't see you.

Q. You showed Sam Williams this point to fish on, didn't you?

A. Well, I used to fish on that point myself, when I had a scow.

Q. How long ago was that, Charley?

A. I couldn't say exactly when is that.

Q. About how many years ago?

A. I think it is about six years ago.

Q. About 1909?

A. About that—just about.

Q. Sam Williams was the first man that fished at that point, wasn't he?

A. Well, I fished there until I lost my scow—got away in the winter time.

Q. I am talking about Sam now.

A. Peter Jackson built his scow, and he fished there. I don't know whether Sam was with him or not, but I seen Sam was helping him.

Q. You saw Sam there, didn't you?

A. Yes.

Q. That was in 1910?

A. That was 1911, I think it was.

Q. Well, now, Sam Williams was the first man to fish at that point, wasn't he, with a scow?

A. I say, I can't say whether Sam Williams fished on that point. But I said it was Peter Jackson fished that point.

Q. Well, now, as a matter of fact, don't you know Sam Williams fished at that point?

A. I know? Well, I don't know exactly whether Sam fished at that point, but I know that Peter Jackson was the one that built the scow, and he took his scow in and fished. I seen Sam was with him. Whether he was working for him or whether they was
789 partners, I don't know.

Q. Wasn't Sam the first man to fish there with a scow?

A. No, sir.

Q. You are sure of that?

A. I am sure.

Q. Didn't you tell Sam that that was an old Yakima fishing place?

A. No Yakima fished on that place.

Q. Didn't you, on the 17th of April, at the Warm Springs Agency, in Warm Spring, Oregon, tell Mr. Gilbert H. Hall, the Superintendent of the Reservation, that Sam Williams was the first man who ever fished at the point that Sam claimed; that you had showed Sam that place, and told him at the time that the old Yakima Indians had told you about it, and that it was an old Indian fishing place? Didn't you tell Mr. Gilbert Hall that?

A. No, sir, I didn't. I don't remember it, if I told him, but I said like this: There is a fellow named old Chapman when I had scow on that point, he says, "If you can't catch no fish on that point where you are, you can come down on this place." And I told Sam if I can't catch no fish on that point, I will bring my scow down there. Of course I didn't bring it there, and try. There is where Sam learned that place, to fish that place.

Q. I want you to say whether or not you made this statement to Mr. Gilbert Hall, out there at Warm Springs.

A. Well, that is all the way I made the statement, what I said.

Q. Didn't you tell him that last April?

A. No, sir, not that I remember.

Q. Well, that is only just a few weeks ago.

A. I told him just what I am saying now. That is all the statement I made to Mr. Hall.

Q. You didn't make this statement?

790 A. Well, that statement was made at the Warm Spring Reservation. That is the only statement I made, was what I was saying—that the old fellow showed me the place, and I told Sam it was the place.

Q. You told Sam it was the place?

A. Yes.

Q. Did you tell him it was old Yakima fishing place?

A. No Yakima fish on that place.

Q. Before that time, did you say it was old Yakima that used to fish there?

A. That is before I came. I never seen him. I never seen Yakima people fish in that place.

Q. Well, didn't you say it was old Yakima fishing place a long time ago they used to fish there?

A. No, sir.

Q. Never said that?

A. Never said that.

Redirect examination:

Q. Now, Charley, he has asked you about landing along here. Now, what do you say as to whether you could cross the river with boats, and land at that point, or immediately above it, at any stage of the water, when it would be fishing water?

A. Why, you cannot use this water when it is fishing water.

Q. What say?

A. You cannot use this water when it is fishing water. It is pretty rough—boat couldn't go there at all, row-boat. It is pretty rough. You cannot land anywheres around here except in low water.

Q. How is it out in the river? How is the water out in the river?

A. Now—in high water?

Q. Yes, in high water. Any time ordinarily high, or when it is high enough to fish.

A. Well, the higher it is, the rougher it gets. It is pretty rough when it is high. You cannot use this river unless in the low water.

791 Q. Now, then, where was it that Peter Jackson had his scow when you say Williams was working there with him? Was it above or below this point?

A. Right up on this point here.

Q. Well, above or below this point?

A. Above the point.

Q. How far above the point?

A. About a couple of hundred feet.

Q. How much?

A. About a couple of hundred feet.

Q. About a couple of hundred feet above the point?

A. About. I could not judge exactly how far it is.

Q. Now, when did you, as far as you know—when did Sam Williams first commence to fish down here below the point, at the point where Mr. Seufert's wheel now sits?

A. 1913, I guess.

Q. 1913?

A. About, I think.

Recross-examination:

Q. Where was it that Peter Jackson and Sam were?

Court: He says about 200 feet above the point. Is that the map that is in evidence?

Mr. Rankin: This blue print of the same one.

Q. Where was it that Peter Jackson fished, Charles? There is a point right here rounding off here. When you first saw Peter Jackson there in 1910—

A. 1911.

Q. All right. Where was he then?

A. Well, I was working for Seufert.

Q. Where was Peter Jackson fishing?

A. He was fishing about here somewhere.

792 Q. Fishing up here? You understand where this is now, this point out in the river?

A. Yes, sir.

Q. He was fishing away up here?

A. He was fishing right around this point.

Q. On the inside, or up that bend in the river?

A. On that bend. He fished right here, about there—somewheres along there.

Q. Now, I am going to ask you, Charles, if it is not a matter of fact—if he didn't fish about there, with Sam Williams, right practically on the end of the point?

A. No, sir.

Q. Didn't they drop down there as the water went down, didn't they drop back down the river at that point?

A. And fish?

Q. Yes.

A. No, sir.

Q. Never did that?

A. No, sir.

Court: I think you are getting this witness confused. That point has been cut off there.

Mr. Rankin: That is the way it is now, since they were fishing there.

A. I was fishing there at the time it was cut off.

Q. Before it was cut off, Charles, could you fish there with a scow wheel?

- A. Oh, well, that is the time I have been fishing there, you know.
Q. Before it was cut off?
A. I fished right in this point where Jackson is now.
Q. That was before it was cut off?
A. That was before it was cut off. They cut off that year, that fall, commenced cutting off after fishing season closed.

Court: You fished there with a scow?

- 793 A. Yes, sir; fish wheel.

Court: Who owned the scow?

A. Myself.

Court: You ran it yourself?

A. Yes, sir; my own.

Court: Because of the Indian right to fish there?

A. Yes, I think so.

Q. Then you want to be understood, Charles, that Peter Jackson fished up in that——

A. Above the point.

Q. Above the point?

A. Yes, sir.

Q. Didn't he ever fish right on the point?

A. No, sir.

Q. Never fished below?

A. No, sir.

Q. Did Sam Williams ever fish around below the point?

A. About 800 feet below.

Witness excused.

- 794 PETER BRUNO, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

— How old are you, Peter?

A. About 52.

Q. Are you a full blood Indian?

A. Yes, sir.

Q. What tribe do you belong to?

A. I belong to Wasco tribe.

Q. Have you any Yakima blood at all?

A. No, sir, I have not.

Q. Are you acquainted with Frank Seufert?

A. Yes, sir, I worked for Frank Seufert.

Q. You worked for Frank Seufert?

A. Yes, sir.

Q. How long have you been working for him?

A. I worked for him about 11 years now.

Q. 11 years?

A. Yes.

Q. Whereabouts do you live?

A. I live down at the cannery a little down the river.

Q. Where did you live before you went to work for Frank Seufert?

A. I been all the time in The Dalles, where I been sleeping now.

Court: You will have to speak louder.

Q. Are you acquainted with the shore of the Columbia River, up and down on each side about Celilo, and from there on down to The Dalles?

A. I didn't know anything about Celilo.

Q. You don't know anything about Celilo?

A. No, sir.

795 Q. Are you acquainted with the shores of the Columbia River on both sides, along about Three Mile Rapids?

A. Yes, sir.

Q. How long have you been acquainted with them? How long have you known the Columbia River along there?

A. Well, when I come about 13 years.

Q. You were about 13 years of age?

A. 11 years.

Q. You remember back to that?

A. Yes, sir.

Q. Now, are you acquainted with the customs of the Indians, your tribe and the Washington Indians, as to fishing on the two sides of the river?

A. No, sir, I never heard it. I never knowed it.

Q. Since you have known about the river, which side of the river do the Wasco Indians fish on?

A. On the Oregon side.

Q. Which side do the Washington Indians fish on?

A. On the Washington side.

Q. Now, how long have you known that point, Three Mile Point, where Mr. Seufert's scow is now?

A. Well, it is about 11 years.

Q. Now, during that time, has there any Yakima Indians ever fished there?

A. No, sir.

Q. Did you ever know, at any time, any Yakima Indians, or Indians from the Washington side, to fish there?

A. No.

Q. Before you went to work for Mr. Seufert, did you fish along the river?

A. Yes, sir.

Q. Where did you fish?

A. Fishing on that point.

Q. What say?

796 A. Fishing on that point, a little above.

Q. Before you went to work for Mr. Seufert?

A. Yes, sir.

Q. How far above?

A. Well, he can put me anywhere where he wanted me to put it in.

Q. I know, but before you went to work for him, did you fish anywheres along the river?

A. I fish the cannery above.

Q. Above the cannery?

A. Yes, sir.

Q. How did you fish there?

A. With a dip net.

Q. How long had you been fishing there?

A. Every year.

Q. For how many years back?

A. About 11 years.

Court: How far is the cannery above this point?

Mr. Bennett: I don't know exactly, your Honor. A mile or two.

Court: You fished above the cannery?

A. Yes, sir; about a mile and a half from the cannery.

Q. A mile or a mile and a half above the cannery?

A. Yes, sir.

Q. That would be about how far above this point?

A. I don't know how far is it from the cannery on this side the point.

Q. How many years ago was it you first commenced to dip for fish there at that point?

A. I never—

Mr. Rankin: He didn't testify—I object to that as leading. I don't mind if he leads him a little bit—he is an Indian witness, but I don't want him to put words in his mouth. There has been no testimony that he ever fished there with dip net.

797 Mr. Bennett: He said he fished above Seufert's cannery with dip net.

Mr. Rankin: Oh, I beg your pardon. I thought you meant at this point.

Q. Now, how many years ago did you first commence to fish at this place above Seufert's cannery with dip net?

A. Oh, I have been fishing there every year since fish come up. That is, time they commenced fishing.

Q. Well, how old were you when you first commenced to fish there with dip net?

A. Well, I was about 26 years old. I don't remember.

Q. As far back as you can remember?

A. About 26 years old I was. I been fishing all the time.

Q. Now, then, do you sometimes fish with dip net in these later years?

A. No. What you mean? In the fall, or what?

Q. Well, any time, do you fish any time with dip net? Some times now, in the last few years? Do you sometimes fish with dip net or not?

A. No, some times fish in the fall and some times in the spring.

Court: He said he had been working for Seufert the last few years.

Mr. Bennett: He says he has been working for Seufert for 11 years, but what I was trying to get at is, whether he worked steady for Seufert—with dip net for himself, or for Seufert. I don't know about the facts of it—during that time at different times.

Q. This point above Seufert's cannery, have you dipped there any for fish in the last few years?

A. I been fishing over there above with dip net.

Q. With dip net?

A. Yes.

798 Q. Now, is there anything to prevent any one from fishing there at that point now?

A. No, sir.

Q. Is there any fish wheel, or anything there at this point where you used to fish with dip net?

A. No—fishing between the two wheels, one above and one down—fishing on between the two wheels.

Q. When you worked for Seufert fishing during the last 11 years did you get so much a day, or did he buy your fish?

A. Some time sold for him when I fish with dip net—he pay me five cents a pound.

Q. Five cents a pound for your fish?

A. Yes.

Q. Have you ever fished with wheel for him?

A. I done fishing with a wheel; he furnished the wheel.

Q. He furnished the wheel?

A. Yes, sir.

Q. Well, now, how did you get your pay then when he furnished the wheel, and let you fish with the wheel?

A. Some times he paid me by the day; some time he pay me by the pound—five cents a pound, when he furnished the wheel.

Q. Were you fishing for Mr. Seufert when the injunction was served in this case?

A. Yes, sir.

Q. Where were you fishing then?

A. I was fishing on a little point. That is last year. Last year I tried fishing on that point where he has got trap. Then I quit fishing.

Q. How were you fishing then—by the day?

A. By the day. He pay me by the day or by the pound.

Q. Well, did he pay you by the day or by the pound?

A. By the pound last year.

Q. Five cents a pound for what fish you caught?

A. Yes.

799 Court: You mean on this Three Mile Rapid?

Mr. Bennett: Yes, when he was enjoined.

Court: He was then fishing for Mr. Seufert?

Mr. Bennett: Fishing for Mr. Seufert under contract. That is, Mr. Seufert furnished him the wheel, and he sold the fish to Mr. Seufert at five cents a pound.

Q. During the time that you fished there, did you ever know any Yakima or Washington Indians to fish over on the Oregon side?

A. Whereabouts, on that point?

Q. Anywheres up and down the river on the Oregon side.

A. No, sir, I never did.

Q. Did you ever know any Oregon Indians to fish on the other side?

A. No, sir.

Q. Did you ever try to go over there and fish?

A. I went there about two years ago, on Washington side. I wanted to try to fish, and people don't want me to fish, and drive me out, and I come back on the Oregon side.

Cross-examination:

Questions by Mr. Rankin:

Who drove you out?

A. Well, I don't know what the man's name is. I know the man, but I don't know what his name is.

Q. A white man?

A. No, Indian.

Court: Was he an Indian?

A. Yes, sir.

Q. Whom were you fishing for then?

A. I just went to fish for myself.

Q. All the fish you caught you sold?

A. Sometimes I just keep it when it be closed season. I was fishing for myself. When it be open season, I was fishing sell it to Seufert.

800 Q. Now, you never had a license to fish up there yourself?

A. No, sir.

Q. Mr. Seufert always had the license?

A. Yes, he always buy the license.

Q. You never had a scow of your own to fish up there, did you?

A. No, sir.

Q. Mr. Seufert always furnished the scow?

A. He always furnish me.

Q. How long has Mr. Seufert been paying you by the pound?

A. Well, when I came there every year, he pay me five cents a pound.

Q. When did he start to do that?

A. About 11 years, when I come there the first time.

Q. About 11 years ago he did that?

A. Yes.

Q. Who fished up there at Three Mile first, you or you brother Cane?

A. Cane.

Q. Cane fished there first?

A. Yes.

Q. When did Cane stop fishing there?

A. Well, he just brought scow there on the fall time, and he didn't catch nothing then. He just took it off on the fall time.

Q. Did he do it voluntarily, or was he put off?

A. He take it off.

Q. Took it off himself?

A. Yes.

Q. You are unfriendly to Sam, aren't you, Peter? You are not a friend of Sam Williams—you are against him?

A. I don't know him—he just come—I don't know how long he been there.

Q. He is not a friend of yours?

A. No, sir.

Q. You dislike him?

A. Well, some of them——

801 Q. You have threatened to run him off up there, haven't you?

A. No, sir.

Q. Didn't you ever tell Colonel Dorrington here a week ago today, that you would get your people together and run Sam Williams out of there?

A. I don't know. I forget. I don't know what I told him.

Q. You don't know what you told him. Don't you remember what you told him?

A. I didn't know that.

Q. Didn't you say that Sam Williams didn't belong there?

A. Well, that is what I say.

Q. Didn't you say that Sam Williams didn't belong there, and you would get the Wasco Indians together and run him out—your people together, and run him out?

A. Of course, I know that is our side, you know—Oregon side—that is what I told him.

Q. Yes, you told Mr. Dorrington.

Examination by the Court:

Q. Did the Indians fish on that point regularly a long time ago?

A. I didn't know much about it. That point nobody know on dip net place. I know just only one place is all.

Q. Did they use this place for dip nets and spears?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. You don't know whether the Indians fished from that point regularly or not?

A. That is all I know they were fishing with dip net.

Q. They were fishing with dip net?

A. Yes, just at one place.

Q. On this point?

A. Yes, on Little Point.

802 Q. Did they fish all around that point?

A. No, sir; not all around.

Q. Just point out where they did fish on that point. That is a long time ago. I don't have reference to that scow that is there now.

A. Peter Jackson's wheel.

Q. Did the Indians fish there?

A. Yes, just a little above, about 20 feet from this scow to here, which is dip net place.

Q. That was how many years ago?

A. That is only one place I know. Always they fish on, Wasco Charley.

Q. How long ago was that when you first knew that?

A. That was when I first come, but I know they been fishing every year for a long time.

Q. Do the Indians fish any now on this point?

A. No, sir; nobody been fishing right in here.

Q. It is only out at this point here?

A. It is only in here.

Q. Did a good many Indians fish there?

A. No, sir; just only one old fellow.

Q. Just one old fellow?

A. Yes, he died last winter.

Q. Then there was only one man that you ever saw fishing there of the Indians?

A. Yes, he was just fishing right in here.

Q. Well, did you see numbers of Indians go down there to fish?

A. No, sir; I never saw the Indian fishing right in this point around here.

Q. You never saw the Indians fishing there at all?

A. No, sir.

803 Q. Did they dry their fish out here on the bank, or further back?

A. No, there is only one place right here when there will be low water, you know, speaking of this here. When there will be a little higher water, it is all covered up. There has been nobody fishing all around here.

Q. No Indians?

A. No, because it has been covered up with water.

Q. They didn't have any place to dry their fish there?

A. No.

Q. They never dried their fish there?

A. No.

Cross-examination continued:

Q. That place where they used to dip net, was that place blown off by the Government?

A. Which place?

Q. You testified they used to fish there.

A. No; this set net, of course, dip net, we just tied them up, you see; little eddy, you know, there used to be, around in the water; we just tied them up.

Q. Was that place blown off by the Government, or not?

A. No.

Redirect examination:

Q. That place is there yet, is it?

A. Yes.

Q. How far do you say it was above Peter Jackson's wheel?

A. On that dip place?

Q. Yes, how far is that dip place from Peter Jackson's wheel?

A. Oh just a little ways, about 20 feet.

Q. About 20 feet?

A. Yes, just a little ways.

Witness excused.

804 ED CRATE, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

Mr. Crate, you are a police officer here in the city of Portland?

A. In Portland, yes, sir.

Q. You are brother of John Crate, who testified a while ago?

A. Yes, sir.

Q. Are you older or younger than him?

A. I am older than he is.

Q. Older?

A. Yes, sir.

Q. Where did you live before you came down here to Portland?

A. At The Dalles.

Q. How long did you live at The Dalles?

A. Well, I have lived there since 1849, I guess, when my folks came there in the fall of 1849.

Q. And up to what time after you came there did you live at The Dalles?

A. Why, I left The Dalles—it has been about 28 years now, last April.

Q. About 28 years ago?

A. Yes.

Q. How old a man are you?

A. I was born in 1849, or in 1846, I mean—excuse me.

Q. Now, when you first got big enough so that you could remember, at The Dalles, were there many white people in that country?

A. Well, there wasn't very many. There was a little town
805 there. Most of the Indians, those Wasco Indians, were along there, along the rapid on the Oregon side.

Q. In those days, how well were you acquainted with the Indians along there?

A. Well, I was acquainted with them this way, meeting them while I was a little fellow, till I grew up. I was out most of the time, you know, while I wasn't right at The Dalles, on the ranch.

Q. Were you acquainted with the custom of the Washington

Indians and the Oregon Indians, as to the respective sides of the river on which they fished?

A. Well, the way I always understood was that the Wasco Indian always fished on the Oregon side, from the Falls, Celilo Falls, down to the foot of the rapid, along on the Oregon side, and the Klickitat Indian and the Yakimas, they were fishing on the Washington side.

Q. Then the accustomed and usual places for the Oregon Indians to fish were on the Oregon side, and for the Washington Indians on the Washington side?

A. That is the way, as near as I could understand it.

Q. (Redirect:) Your father was an old Hudson Bay man?

Questions by Mr. Rankin:

What year did your people move to The Dalles. Mr. Crate?

A. My father came there in the year of 1849, the fall.

Q. He went to The Dalles in 1849?

A. Yes, came down from Walla Walla. He was for the Hudson Bay Company.

Q. Did you notice whether or not in those early years the Yakimas crossed over to the Oregon side?

A. Oh, well, they would cross over to visit there at The Dalles. They would come from Yakima and cross over.

803 Q. And the Wasco Indians would cross over to the other side, wouldn't they?

A. Oh, I suppose so, yes.

Q. Did you notice particularly whether or not they fished?

A. Well, that I don't know. That is, of the Yakima Indian or the Wasco fishing on each side, that I couldn't tell. But they were supposed to fish on their side, and the other one on their side.

Q. That is what you understood that they were supposed to do?

A. Yes, sir.

Q. But whether or not they actually did, you don't know?

A. I don't know.

Q. (Redirect:) Your father was an old Hudson Bay man?

A. Yes, my father was an old Hudson Bay man.

Witness excused.

807 GEORGE SNIPES, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

— Mr. Snipes, where do you reside?

A. In The Dalles.

Q. How old a man are you, if you don't mind telling?

A. I lack a few days of being 83 years old.

Q. When did you come to The Dalles?

A. 1853.

Q. Then you were here in 1855, when this treaty was made?

A. Yes, sir.

Q. And in 1859, when it was ratified?

A. Yes.

Q. How old were you when you came to The Dalles, about?

A. I was 21 years old the day I crossed the top of the Rock Mountains, coming to this country.

Q. Do you know whether you were the first man to be married in Eastern Oregon, or not?

A. No, I was not the first. I was the second, though.

Q. Now, in the early days, when you were here, from 1853 on, were there many white men in the country?

A. Oh, there was quite a few men. Most of them lived with squaws. There was but four white families east of the mountains when I come there.

Q. Who were your neighbors up there at that time?

A. Laughlin, and a man by the name of—I can't call his name just now.

Q. Did you have many white neighbors?

A. No, sir.

808 Court: He said there were only four families.

A. There were only four that could be called neighbors at all.

Q. Outside of that, who were your neighbors?

A. The Indians, principally.

Q. Now, you have lived there ever since, have you?

A. Yes, sir.

Q. Were you acquainted with the Indian customs during those days, and from that time on, as to the respective sides of the river on which the Washington and Oregon Indians fished?

A. Well, I was acquainted with them, but then I didn't know much about them. I knew that the Oregon Indians fished on this side, and the others were supposed to fish on the other. Whether they come over here to fish or not, I couldn't tell.

Q. Did you ever know of them coming over and fishing?

A. Never did.

Q. Were you up about the fishing frequently there?

A. I went up quite often.

Q. And did you ever know of any of the Wasco or Warm Spring Indians going across the river and fishing on the other side?

A. I did not.

Examination by the Court:

Q. Did you know anything about that at all?

A. Well, they might have went there and I wouldn't know anything about it.

Q. You don't know anything about that?

A. I know I never saw any of them going over.

Q. You don't know about their habits in crossing or recrossing?

A. No.

Q. Did you know any of them, of the Indians, the Yakimas, and any of the Wascos?

- A. No, I didn't know the Yakimas.
- 809 Q. Now as it about the Wascos and Warm Springs?
- A. It was 20 years before ever I got acquainted with them.
- Q. With whom?
- A. The Yakima Indians.
- Q. How was it with the Wascos?
- A. I knew them, because we was with them, a good many of them, all the time.
- Q. You were frequently up and down the river there?
- A. Yes.
- Q. Saw them fishing a good many times, or not?
- A. I have seen them fishing a number of times.
- Witness excused.

- 810 J. T. RORICK, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

- Where do you live, Mr. Rorick?
- A. The Dalles.
- Q. How long have you resided there?
- A. In the city about five years.
- Q. Did you ever reside on the Washington side, across from The Dalles?
- A. Yes.
- Q. How long did you reside over there?
- A. About 17 years.
- Q. What, if any, official position did you hold over there?
- A. Justice of the Peace.
- Q. Now, during your residence over there, and since then, did you, or did you not have occasion to become acquainted with the Indians along up and down the Columbia River there?
- A. I did.
- Q. Were you at any time engaged in fishing along the river yourself?
- A. Yes.
- Q. Where was your fishing place, from this point that juts out into Three Mile Rapid on the Oregon side?
- A. Directly across.
- Q. Right straight across on the Washington side?
- A. Yes.
- Q. How long were you engaged in fishing there, directly and indirectly, by yourself and by others?
- A. Well, about 20 years.
- Q. Now, during that time did you observe the custom of the Indians as to fishing on the respective sides of the river, the Washington Indians, and the Oregon Indians?
- 811 A. Well, yes, in a general way.

Q. Well, where was the usual and accustomed places of fishing for the Washington Indians?

A. The accustomed places for the Washington Indians was at Five Mile Rapids and Upper Tumwater, that is across the river just below Celilo Falls.

Q. On which side of the river were these places?

A. Washington.

Q. Where were the usual and customary places of the Oregon Indians to fish, with regard to the river?

A. Well, so far as my personal acquaintance with them was concerned, why, it was on the Oregon side.

Q. How, as far as your observation goes?

A. Well, I think it covered it pretty well.

Q. Did you ever know Oregon Indians to fish on the Washington side, or any Washington Indians to fish on the Oregon side?

A. None that I was acquainted with.

Q. Now, did Sam Williams at any time fish for you, or on any place occupied by you?

A. Yes.

Q. What did you understand as to what tribes he belonged to at that time?

Mr. Rankin: I don't know as that makes any difference, what Mr. Rorick's understanding was.

Court: You may ask the question. I don't care very much about it, as far as that is concerned.

Q. Now, Mr. Rorick, are you acquainted with this Three
812 Mile Point where Mr. Seufert's wheel is located, the point in dispute?

A. At the point where it is blasted off, you mean?

Q. Yes, where it was blasted off there by the Government.

A. Yes, I am pretty well acquainted with that.

Q. To what extent, if at all, has that been fished in the times since you have been there?

A. In what way?

Court: By Indians, and otherwise.

A. Well, I don't know that I ever saw any Indians fishing there with dip nets. I have seen wheels running there, but you see that would be across the river, and I don't know that I ever paid any attention to it.

Q. You don't know about that?

A. No.

Q. Now, about how often does that shore there become covered with water immediately above where Mr. Seufert's fish wheel now is?

A. Oh, fully half the time, one year with another. Maybe more than that. I don't know that I paid close attention to it.

Q. And how long does the water stay over it?

A. Well, sometimes it is submerged for quite a period, and other times, when the water does not rise so high, and falls soon, why, short—maybe from a week to—I think, in 1894, it was under water there for, oh, probably three months nearly.

Q. That was the season of the excessive high water?

A. Yes.

Q. Ordinarily, about how long? Is that the longest time it has ever been?

A. Yes, to my knowledge.

Q. As I understand you, it varies from that down to not at all?

A. Not at all, yes.

Q. Now, Mr. Rorick, are you acquainted with the channel
813 of the Columbia River there, between your place and this
Three Mile Point?

A. Yes.

Q. And immediately above?

A. Yes.

Q. Are you acquainted with boating on the Columbia River?

A. Yes.

Q. What do you say as to whether that is a place that can be crossed with boats, and land on that point, go across from the Washington side, either immediately at the point or above, and land on that point at stages when the water is high enough for fishing?

A. You mean directly across from the Washington shore?

Q. Yes.

A. Go across to that point on the Oregon shore?

Court: Or above that.

A. Or above that?

Court: Yes.

A. I might explain that by saying that at the foot of the Narrows, at the entrance of Big Eddy, the bank or contour of the river there, is generally precipitous cliffs, and it keeps that formation around the eddy, and makes a bend as it comes out below the mouth, now, of the present canal, and that formation continues along down till it gets just opposite to this point. It is a precipitous cliff. And a little east of north of that, that cliff at low water is probably 60 to 70 feet at low water, with here and there a sag. At one of my fishing points, there is a sag there, where it is probably—it might be 40 feet straight down. I say that to show the impossibility of a landing place there. There is no place there where a boat could land, or

814 where you could get down to a boat, or out of a boat on main land, if you did land. Now, just at that point, there is about 23 acres of rocks, which I had surveyed in 1895, under the Washington laws, and they run out to a point directly opposite this Three Mile Point.

Q. That is below this precipitous cliff, as I understand it?

A. Yes. The precipitous cliffs, I say, end in that. And these rocks,—they are rolling rocks—there are channels cut in them. They extend out, and there the channel is narrow, and at that point the Government blasted off, some eight or ten years ago, blasted off the point. At that point there is a sag, we called it—I called it The Bay. That is what it was called when I first went onto that place. From there on down then, the formation is less precipitous. But at any place, well, for half a mile below that, at any stage of water

above ten feet—ten feet above low water—a skiff could not get up there; couldn't do it in the last 23 years. They couldn't get by my middle wheel. There is no skiff could get by there, and it would take a pretty good launch to get by.

Q. How about crossing at any stage when it was fishing water?

A. No crossing, because it is impossible to get up there to cross.

Court: Above that ledge of rock, is there any place to get down there so as to cross?

A. No. There is a place to get down, but it would not be safe to cross. You would have to cross from the Oregon side first, to get over there with your boat. There is no landing place for a boat there at all. It is a precipitous ledge of rocks.

Q. Well, now, at this place where the rocks come down so that you could get down to the water, as I understand you, how would it be about pushing a boat out from there and crossing over to the Oregon side?

815 A. A skiff could not live in that water at ten feet, and a skiff could not get across there. A launch could not get across there. It could not stay in that current.

Q. Can you explain to the Court why that is? What the state of that water is?

A. It is very turbulent, and full of boils and whirlpools.

Q. How big are these whirlpools?

A. Some of them are very large—take down a skiff. That has happened in two or three instances since I have lived there, that is, above that point. I have never heard of anybody attempting to go across there. That is the most dangerous point below Five Mile Rapids. They have, in a few instances, gone across Big Eddy.

Q. How far is that above?

A. To go around by the river, that is probably three quarters of a mile. The Big Eddy lies largely in Section 25.

Court: Is that above Five Mile Rapids?

A. No, that is below Five Mile Rapids. Five Mile Rapids is in Township 2-14 entirely, and the Big Eddy is in Section 25. It is the east part of Section 25, and borders on the fractional north part of 36 in Town. 2, 13. That is the town, to the west. Three Miles Rapids begins at Lot 2, in Section 35, coming around the contour of the river—takes out all of 33, you see.

Court: Well, now, tell me, is there any place below Five Mile Rapids where there is a landing on the Washington side, by which you can take a skiff and come over to this side?

A. There is, at low stage of water.

Court: Where is that now?

816 A. In the big eddy there is one place where it comes off my land, on Section 36, on the south side of the big eddy, at the pocket there is, then you can go along the shore pretty near to the outlet of the big eddy at low water, then you commence to strike the precipitous rocks.

Court: From this landing place, can you come across to this side with a skiff?

A. To the Oregon side?

Court: Yes, at low water?

A. I say that has been done, yes. It has been done, but it has been with great danger. Winans man went down there with two men. Three men went down there with a boat once. They were carried under, they don't know how far, but they clung to the boat, and eventually brought up. As these whirlpools come along, it starts the boat to whirling. The boat tips up on the edge of that swirl, then goes down stern foremost. Bill Charley lost five children there at one time, attempting to get across there. Since then there hasn't been much—I don't know of anybody that has ever made the effort to go across there with a skiff. Now, launches do, but then launches are very seldom there.

Q. You mean power launch?

A. Yes, power launch, something that you can get steerage over this whirlpool, but with oars you can't get steerage. The force of the water is too great. It overcomes the force of your oars. And Three Mile Rapids are more dangerous than Big Eddy. That is, not in low water. I have been up through Three Mile Rapids three times this spring in a skiff, and a rather small skiff, too.

Q. That was in what time?

A. It was in March.

817 Q. That was not during fishing water?

A. No.

Q. Now, how do the Indians get across the river from one side to the other, when they want to get across?

A. At The Dalles on the ferry.

Q. Come down to The Dalles?

A. Yes.

Court: Before the ferry was put there, how would they get across the—where would they cross?

A. They would have crossed down there at high water. But there has been a ferry there of some sort ever since there has been a Dalles. When the troops were first stationed there, there was a ferry there.

Q. Was it safe for them to cross any place between Three Mile Rapids and Celilo?

A. Well, you see there is a broad stretch from above the mouth of Five Mile Rapids, up to Celilo. There is a long stretch of river there.

Court: That they can cross?

A. Yes. Of course, there is rapids—there is what they call Ten Mile Rapids. They could not cross there, but just above the mouth of Five Mile Rapids, if you go far enough above so that the current would not carry you down, you could cross there, but then you would be several—you would be two and a half miles—you would be probably three miles above Three Mile Rapids.

Court: Do you know about the habits of the Indians in crossing the river in an early day?

A. No, I don't know anything about that.

Q. Not before you came there?

A. No. Only I know this: That an Indian could not cross any better in an early day than he could at this present time. He
818 would take the chances that Bill Charley's family did, of going down in a whirlpool.

Q. As far as their custom is concerned, before you came there, you don't know about it?

A. No.

Cross-examination.

Questions by Mr. Rankin:

Mr. Rorick, they fish—move fish wheels back and forth across that river every place, don't they?

A. Not every place, no.

Q. Don't they have fish wheels all down through these rocks over here?

A. Yes.

Q. Don't they bring them down from Mr. Seufert's place up in here?

A. Yes.

Q. And they have them over on this side where these precipitous cliffs are. This is the Washington side. This is where that long sweep comes back. Here is the point out here (referring to map).

A. Yes.

Q. Here is the shore line over here. These are all rocks.

A. Yes.

Q. They put fish wheels all through these rocks here, don't they?

A. No, they don't.

Q. Last year in September, wasn't there a fish wheel laying down in here?

A. Yes, but last September the water was below zero.

Q. They can put them down there?

A. In low water, yes, sir; but they cannot put them down there in high water, nor they cannot put them on rising water. The current is vastly different when the stream is rising or ebbing.

819 Q. They cannot fish there in high water?

A. Yes, that is when they do fish.

Q. Can't they fish in low water?

A. No, sir.

Q. Wasn't there a scow fishing there in September last. Last September?

A. We didn't catch anything. It was my land. There might have been some poacher there. If he was, he wasn't catching anything.

Q. If it was Mr. Seufert's wheel, would it have been all right?

A. Yes, because it was rented to him.

Q. Over here there were two scows fishing on this point last summer, weren't there?

A. Yes, sir.

Q. How about this eddy that runs up in here? You call this the eddy, I understood?

A. Yes.

Q. There is sand beach right in there, isn't there?

A. No, there is no sand beach.

Q. Is that where Jake Andrews' scow was put in?

A. That scow rested there. Jake Andrews' scow fishes right at that point.

Q. It was put in here—stayed up on the beach most of the summer, didn't it?

A. Yes.

Q. You can come down there, can't you?

A. Yes.

Q. Can't you cross there with a skiff?

A. No. You can in low water—you can go anywhere around here in low water, clear up back of the eddy.

Q. You spoke about you couldn't do it in fishing season. Could you do it in March?

A. Yes.

820 Q. That was fishing season for the Indians, wasn't it?

A. Yes.

Q. This is where that precipitous point is up here?

A. Yes.

Q. How about getting above this precipitous point? Can't you come up to the water's edge, up there, and come down the river?

A. Yes.

Q. How about this shore along here? Can't you land on this shore here?

A. These rocks here you can, yes. Yes, you can land here. I landed over here this spring.

Q. You can land around here most any place, can't you?

A. Yes, any time in low water, you can.

Q. So the Indians in the early day could have found places to have crossed there all right, couldn't they?

A. In low water. Anybody could at low water. But they couldn't in high water.

Court: Is there any fishing there in low water?

A. No, I never saw anybody fish there in low water.

Q. Don't they have the spring run that comes up there in March and April?

A. Yes, but they wouldn't go there to fish, because there — so many places in the river that are better.

Q. Well, that is your opinion, isn't it?

A. It is my knowledge.

Q. Couldn't they fish at this point if they wanted to?

A. They could, but they might just as well come down here and fish at the mouth of the Willamette. They wouldn't get anything.

Q. Do you say they never do come down there to fish?

A. Not since I lived there.

821 Q. I am talking about 1855. You don't want the Court to understand that in 1855, or years thereafter, the Yakima

Indians couldn't have come down here and crossed up above, or come down here and fished?

A. They could. But I want the Court also to understand it would have been nonsense for them to do it.

Q. That is your opinion, isn't it?

A. It is not my opinion. It is my knowledge.

Q. You were not there in 1855, were you?

A. No, but the fishing conditions in the river were the same in 1855 that they are in 1915. You can't catch fish with a dip net except where it is swift water.

Q. You own considerable land on the Washington side, do you not?

A. Yes.

Q. You farm out the fishing privileges there to the Indians, don't you?

A. Yes.

Q. What business relations have you had with Mr. Seufert on that line?

A. I have also farmed it out to him, as you term it.

Q. Those Indians that fish there, don't you have some business relations with Mr. Seufert regarding them?

A. Nothing only that they are to deliver their fish to Mr. Seufert and Mr. Seufert accounts to me for my share of it.

Q. And he pays you directly for the fish that the Indians catch there?

A. No, because he doesn't get all that they catch.

Q. Well, I don't say that he gets all they catch; but what he does get he pays for?

822 A. What they deliver—I get pay for my share of what they deliver.

Q. And directly from Mr. Seufert, do you not?

A. Yes.

Q. And your interests are largely identified with Mr. Seufert's in that particular, are they not?

A. They only have been in the last two years.

Q. Now, Jake Andrews, you knew him before his death, didn't you?

A. Yes.

Q. Didn't he fish on the Oregon and the Washington side both?

A. Yes.

Q. Wasn't he a Yakima Indian?

Court: Is he an Indian?

Q. Yes, he is an Indian, isn't he?

A. Yes.

Q. Do you know what tribe?

A. No, I don't.

Q. You don't know whether or not he was a Yakima?

A. No.

Q. You don't know whether he lived on the Washington or the Oregon side?

A. He was a Washington Indian. He lived on the Washington side.

Q. And Sam Williams has fished on both sides of the river, hasn't he?

A. Sam Williams has fished on the river there on the Washington side; one year he fished for me there.

Court: What year was that?

A. 1912.

Q. Where was that, Mr. Rorick, that he fished for you? Can you show here?

A. Well, this map don't hardly give it. It is below here.

Q. These are the rocks?

A. These are the rocks.

Q. This is shore line over here? (Referring to map.)

823 A. I had a wheel right here, and another one right here, a wheel right here, and another one here, and another one down here.

Q. When do you first recall the river there in order to testify as to Indian customs, Mr. Rorick?

A. How is that?

Q. When do you first recall the Columbia River there at this point, in order to testify as to Indian customs?

A. Well, whatever I know about that is largely hearsay from my intercourse with the Indians. They would come to me with their troubles. They have come to me with regard to Indians on the Oregon side fishing there, or attempting to fish over there once, I think.

Q. Once?

A. Yes.

Q. Yes, but of your own knowledge—what I am asking is, of your own knowledge, how far back would your memory go as to customs of the Indians at this point?

A. Well, I have no knowledge prior to my coming to that country. That was in 1892.

Q. 1892?

A. That is as far as my knowledge goes.

Q. The lands along the river there, at that time, were pretty well taken up, were they not?

A. Yes.

Q. Have been in private ownership ever since?

A. Yes.

Q. And since that time the Yakima Indians have been in the custom of coming down there and fishing, have they?

A. Very seldom. The earlier part of my residence in Klickitat County, at that point, some of the older Indians used to come down there and fish at Tumwater—Yakima Indians; and at different times I have been on the Oregon side, and seen Indians from the Warm Springs and off that way fishing; and they had their drying
824 houses and dried their fish, but for the last 12 or 15 years they very seldom come.

Court: Can you locate those points on the Oregon side where they fished?

A. Yes.

Court: Locate them, please.

A. Largely at Celilo Falls. Then again further down on Mr. Seufert's grounds.

Court: What point was that?

A. From Mr. Seufert's cannery up. I have even seen them drying fish along there, and I have seen them drying heads and tails that they would get from the offal from the cannery.

Court: How about this point on Three Mile Rapids?

A. Three Mile Rapids?

Court: Yes.

A. The drying there was largely done on the Washington side at Tumwater.

Q. I am asking for the Oregon side now. Did the Indians have a fishing place at Three Mile Rapids at this point?

A. Well, the fishing places at Three Mile Rapids were largely on the Washington side. They are there yet.

Court: Yes, I know they were on the Washington side.

A. At Three Mile Rapids, no. I misunderstood you. I meant at Five Mile Rapids.

Court: I am inquiring about Three Mile Rapids.

A. I never saw any one dipping there with fish net.

Court: You never saw the Indians using that place as a fishing ground?

A. No, and I have worked there on my fish wheels for the first few years I had fish wheels there, stationary wheels. In the
825 spring of the year, generally in February, I would give the authority to repair them for the season's fishing.

Court: That is on the opposite side?

A. That is on the opposite side; and directly opposite; one wheel is on this point, one is right here, and the other one is there. If any one had been dipping with dip net, I think I would have seen them. As a matter of fact, I don't think they could fish there except at a stage of water when it was coming near to the fall.

Q. Later in the season, would you be there?

A. Do you mean after the water began to go?

Q. You spoke of February, that you were out there.

A. Oh, yes, when the season opened, I would be there with the wheel fishing.

Q. All through the season would you be there?

A. Oh, you have to be on the job.

Q. You never saw any Indians fishing on this Three Mile?

A. No.

Q. Haven't you seen Sam Williams there in the last few years?

A. Not with dip net. I have seen him there with the scow.

Q. You are speaking particularly of dip nets?

A. Yes.

Q. When did you first see Sam Williams fishing there, Mr. Rorick?

A. I don't know as I fixed that in my mind. I knew Sam was fishing there.

Q. Indian witnesses from both sides have testified they have fished there with dip nets.

A. Yes.

Q. They might have fished there and you not seen them?

A. Yes, but they have not made it a business. Now, when they want to fish with dip nets, they go where it is good fishing; up at Five Mile Rapids it is good fishing. They throw out several hundred pounds there sometimes in a very few hours. They

826 would naturally go at the better fishing points.

Court: Why do you say that this is not a good fishing point with dip nets? Have you been right around there at that point?

A. Yes, sir. Because the water is not turbulent enough. The water must be in a commotion sufficient to fill it full of air bubbles. That blinds the fish, and it cannot see the dip net coming to it. Now, the salmon is pretty quick and accurate, and when he sees the object in the water, he is quicker than any object that is in a man's hand, and unless that water is full of air bubbles so that his vision is impaired or obstructed, why, he will miss the net; and it must be riled up enough there by the action of a fish wheel, or by the formation of the surface that it is flowing over, to fill it full of air bubbles, so he can not see it, or else you can't catch it. That is the reason you can't catch fish in clear water.

Q. Have you visited this point before it was blasted out?

A. Oh, yes.

Q. And that was true there then, you say, that they couldn't fish there with dip nets?

A. You could, yes, but you wouldn't get much fish there. The Indians fish with dip nets now.

Q. Did you ever see any Indians fishing there with dip nets?

A. No, I never have.

Q. As a matter of fact, there is an Indian village just back of that place, isn't there?

A. No, there is three or four houses there.

Q. Peter Jackson lives there, and Wasco Charley.

A. No, Wasco Charley is dead. He did live there.

Q. Yes, but they did use to live back up there?

827 A. Yes.

Q. Where did those Indians fish?

A. They fished along there.

Q. Did they fish right out on this point?

A. I suppose so.

Q. With dip net?

A. I suppose so. I never saw them.

Redirect examination:

Q. Mr. Rorick, do you know how that village that he speaks of came there?

A. How is that?

Q. Do you know how those houses, that village that he speaks of, came there?

A. I don't think I do.

Q. You don't know about that?

A. No.

Q. You say the fishing is good at Five Mile Rapids?

A. Yes.

Q. On the Washington side?

A. If there is any fish running.

Q. What say?

A. If there are any fish running, it is good, yes.

Q. Is that still open to the Indians?

A. Yes, as far as ever I have heard.

Q. How is it at Selilo?

A. Open as far as I have ever heard.

Q. How is the fishing there?

A. Good.

Q. A good place there to fish?

A. Yes.

Q. For dipping?

A. Yes, the Indians have been catching lots of them there this spring.

Q. What say?

A. The Indians have been catching lots of them there this spring.

828 Q. Now, then, this fishing of Sam Williams and so on at your place, was that on his own right, or by permission of you?

A. By my permission.

Mr. Rankin: We don't claim anything different for that.

Q. Now, Mr. Rorick, one other thing. When does the run of fish commence, with reference to the high water?

A. Oh, the fish really might be running before the water rises. That was the fact this year. There was a pretty good run of fish in the river before the river began to rise, and the river is lower at this time of year than I have seen it in the 23 years that I have lived there now.

Q. Well, is it usually that way, or does the rise in the water start the run, generally?

A. Oh, the fish usually, when the river is rising very rapidly, then the fish won't run. The reason for that would be that the river is usually muddy, and they don't like to run when it is muddy. Now, as the river begins to fall, there will be a little clearing, and then the fish begin to run following the rise. If there is a rather continued

rise of the river, considerable rise of the river, and then a fall, then the fish will run if they are in the river.

Witness excused.

829 F. A. SEUFERT, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

Q. Mr. Seufert, where do you reside?

A. At The Dalles.

Q. When did you come to The Dalles?

A. The spring of 1880.

Q. Are you engaged in the cannery business?

A. Yes, sir.

Q. When did you first engage in the fishing business at The Dalles?

A. Oh, I started to ship fish out in the spring of 1880, when I started in business there, and then followed it up until this time.

Q. Were you fishing yourself in 1880, at first?

A. No, I bought fish from different people, Indians, etc.

Q. You had a grocery store there at The Dalles?

A. I had, and was shipping fruit and fish.

Q. When did you engage actively first in the fishing business yourself?

A. Almost exclusively in 1883.

Q. 1883?

A. Yes.

Q. Now, at the time that you engaged in the fishing business in 1883, was there any cannery in that country? About The Dalles and Celilo?

A. No, sir.

Q. Were there any fish wheels in the river along there at that time?

A. No, sir.

Q. What means were there of catching fish, or how did you catch the fish in the first place, then?

A. Exclusively by dip nets.

830 Q. And what means were there of taking care of them after you caught them?

A. Oh, there wasn't a great deal of demand. I used to supply the railroad as it was building on towards Montana at that time, 1883-1882.

Q. When you bought there, was there any means of salting them or putting them up?

A. There was a little saltery up there round by the Evans place.

Q. What did it consist of?

A. Oh, they had a little rough building, and probably about 20

or 30 tanks. They caught fish with dip nets and split them and salted them for the local Pacific trade.

Q. Now, Mr. Seufert, at that time and from that time on, have you been familiar with the fishing industry there?

A. Yes, sir.

Q. Have your operations, as the years went by, been confined to one side of the river, or to both sides?

A. Both sides.

Q. Both sides?

A. Yes.

Court: Have you a cannery on both sides?

A. One side. I have a cannery on the Oregon side, but I fished—have wheels on both sides. My land is on both sides of the river.

Q. In fishing there, as you have developed your business, to what extent, if at all, have you employed Indian help?

A. I have employed a great many Indians, both by the day and fishing by the pound.

Q. Can you give the Court some idea to what extent?

A. To what extent I have paid the Indians?

Q. No, but about how many do you ordinarily have?

A. I have sometimes in the orchard and cannery 40 or 50 or 60 Indians.

821 Court: Does that occur every year?

A. Pretty nearly every year. If we have a cherry crop, we have a great many come in after they get through with the strawberries at Hood River, then they pick the cherry crop for us.

Court: I mean in the fishing business?

A. Well, they are employed also in piling cans and odds and ends, in the fishing business, and then fishing.

Q. Now, when the Indians fish for you, how do you pay them?

A. Well, when they fish on the fish wheels and on the seines, they are paid just the same as white help—by the day. When they fish with dip nets—some of them fish with wheels that I furnish them—they fish by the pound. They get the market price per pound for the fish they deliver.

Q. Is there any other market up there, any other cannery, to take the fish except yours?

A. No, sir.

Q. Now, in your work there on both sides of the river and in hiring Indians to fish for you and so on, have you become acquainted with their customs and habits of the Indians along the river, as to the respective sides of the river on which the different tribes fish?

A. I have.

Q. Now, what is the fact, Mr. Seufert, as to which side of the river the accustomed and usual places of the Yakima and kindred tribes is, to fish?

A. The Yakimas fish principally on Five Mile Rapids, and then at Fall Bridge, at Celilo Rapids.

Q. Well, but on which side of the river, Mr. Seufert?

A. On the Washington side.

832 Q. Well, now, where is the accustomed and usual places of fishing of the Oregon Indians, with reference to the side of the river?

A. Well, the principal dip net fishing is from about the mouth of the canal, to the head of Five Mile Rapids, and then again just at Celilo Falls on the Oregon side.

Court: Well, where is the mouth of the canal located?

A. The canal is located about a quarter of a mile east of the cannery.

Court: That is above the Three Mile Rapids?

A. Yes, sir.

Q. About how far above the Three Mile Rapids?

A. I should judge from the Three Mile Rapids to the cannery is probably a mile, a little less than a mile, and probably from the cannery in a direct line along the river to the mouth of the canal, would probably be between a quarter and half a mile, a little less than half a mile.

Q. Now, what is the fact as to the Indians crossing there back and forth, and fishing on the other side of the river from their own side?

A. It has never been practiced since I have been there.

Q. Have you ever, at any time, had occasion to try to get them to do that?

A. Yes, sir.

Q. What is the result?

A. The result is that the Washington Indians would not work on the Oregon side, nor the Oregon Indians would not work on the Washington side.

Q. Why not?

A. Well, it is a custom between them; tribal relations that one Indian will not interfere with the other Indian, as far as his relations are, because it would cause friction, and a row between them, and they don't do it.

833 Q. Now, something has been said about a dipping place a short distance above the cannery.

A. Above the cannery?

Q. Yes.

A. Well, there is a number of dipping places between the cannery—at least between the mouth of the canal, which is the foot of Five Mile Rapids—

Q. Is that on the Oregon side?

A. Yes, sir—and the upper end of Five Mile Rapids.

Q. How are those places now?

A. Just the same as they always were.

Q. Do the Indians still dip there?

A. Oh, occasionally.

Q. Anything to prevent them from dipping there?

A. No, sir.

Q. How is it up at Celilo Rapid?

A. It is just the same as it ever was. There has been no improvements whatever put onto the Rapids.

Q. Is it open to their dipping?

A. Yes, sir, they are dipping there now.

Q. Do the Oregon Indians dip there on the Oregon side?

A. Yes, sir.

Q. And how is it on the Washington side, at Celilo Rapids?

A. The Washington Indians dip there.

Q. And to what extent?

A. Oh, to a very large extent.

Q. Is there anything to prevent them in any way?

A. No, sir; I had a wheel there one time a great many years ago, and the Indians found some fault about it that it was obstructing the dipping, and we pulled it out. I think that is about 12 or 15 or 16 years ago.

Q. How is it down at the Tumwater fishery?

834 A. Well, there is upper Tumwater and lower Tumwater, but lower Tumwater really is called Wish-ham on the Washington side.

Q. Is there an Indian village there?

A. Yes, sir.

Q. Fishing Indians?

A. Yes, sir.

Q. How is it up at Celilo, on the Washington side? Is there a fishing village there?

A. Yes, sir.

Mr. Bennett: This is leading, but I just want to bring it out. There is no question about it.

Mr. Rankin: None at all.

Court: How many places of fishing on the Washington side? You have named three?

A. Well, the upper two, Judge. The upper is opposite Celilo Falls, on the Washington side. That they call Tumwater. Then they call lower Tumwater—the whites call it lower Tumwater, but the Indian real name for it is Wish-ham. That takes in the whole of Five Mile Rapids on the Washington side.

Court: That is, Five Mile Rapids, then, the real Indian name of that is Wish-ham?

A. Yes, sir.

Court: There are but two regular Indian fishing places, then?

A. There is two regular villages there—one at what we now call Fall Bridge, where the North Bank railroad track crosses Celilo Falls.

Court: Where is Fall Bridge located?

A. That is right where the Northern Pacific, or the Oregon Trunk Railway crosses the North Bank.

Court: Is that Tumwater fishery?

A. That is what they used to call Tumwater; now they call it Fall Bridge.

835 Q. That was the upper Tumwater?

A. Yes.

Q. How far are those two villages apart?

A. I should judge they are about eight miles apart.

Q. What is the fact about there being fishing places between them on the Washington side?

A. Down near this Ten Mile Rapids where they catch occasionally at very low water in the spring, they call that Rapid Island.

Q. Now, then how are these places at the Five Mile Rapid on the Washington side, and at Celilo, as to being good fishing places for Indian fishing—dip net fishing?

A. They are much better than the Oregon side.

Q. What do you say as to their being good places?

A. They are good places.

Q. What do the Indians do with their fish?

A. Well, on the Washington side, they dry what they want for their own use during the closed season; and when the season opens, that they can sell them, and we can buy them, we buy them from them.

A. Oh, yes, they pack some off through Klickitat Valley, and haul some to town. We get the bulk of them.

Q. Because there is nobody else to buy?

A. Especially Saturdays and Sundays.

Q. What say?

A. We get them practically all Saturdays and Sundays.

Q. Why do you say Saturdays and Sundays? They don't observe the law?

A. Well, Friday is fish day, and Saturdays there isn't much sale for fish, so the consequence is, Saturdays, Sundays and Mondays, we generally get about all they catch.

Q. And now, just to illustrate to what extent they catch
836 them there, can you give the Court some idea of how much what you buy amounts to?

A. I could give you what we paid from the first of the month up till the 13th, until I came down here to answer this complaint. I asked the bookkeeper to take off what checks had been issued. He told me he thought there was about two-thirds of the Indians had come in and gotten their money for the celebration. One-third was still to pay. And some of these Indians haven't quite drawn all their money that they had coming, that they caught from the first of May till the time I left on the 13th, in the afternoon.

Court: Give that in the aggregate. We are going into a lot of detail.

A. I am not going to give it in detail.

Q. Just give the general amount.

A. I think it is \$2,005. It is \$2,005.90.

Q. That was all paid to Indians, was it?

A. Yes, sir, every bit of it.

Q. In the fifteen days?

A. Yes, it was for dip net fishing, to low water.

Mr. Rankin: No scow wheels in that, as I understand it?

A. No, sir.

Q. Now, Mr. Seufert, how are these fisheries at Celilo and at Five Mile Rapids, as to early fishing and late fishing?

A. The Washington side on Five Mile Rapids, and the Celilo

Rapids, are the early fishing ground exclusively. There is very little fishing on the Oregon side in low water on the Five Mile Rapid.

Q. Well, where is the earliest fishing along anywheres between The Dalles and Celilo?

837 A. Fronting right on Wish-ham and Celilo Falls on both sides of the river.

Q. That is at Five Mile Rapid?

A. Yes.

Q. Well, now, how is it as to the fishing continuing at these places?

Mr. Rankin: Your Honor, this is above the Seufert cannery, and hasn't anything to do with the Three Mile Rapid, particularly. I am willing something should go in about the fishing up there, but as to all this stress being laid on the fishing up the river, I don't see any materiality of it. I don't object to it, but I don't see any reason for going into all this detail about a fishing point that is remote from the point in question.

Mr. Bennett: Some of your witnesses testified they went down to fish because it was an earlier fishing place than their places, and that they could catch fish down there when they couldn't catch them up at their place on the Washington side. Now, I want to show, as a matter of fact, that the fishing at their places on the Washington side was the best fishing on the river; that it commenced earliest and continued latest.

Court: I don't think that is very material, as far as that inquiry is concerned. I think you better get down to the point in question, and see what Mr. Seufert knows about that—about the Three Mile on the Oregon side. I think we have had history enough now from Mr. Seufert on the Washington side.

Mr. Bennett: Very well, your Honor.

Q. Now, Mr. Seufert, when you went there in 1880, what, if any, fishing—what, if any, Indian fishing was going on at this point in dispute, in Three Mile Rapids?

A. None.

838 Q. Has there been any Indian fishing there since that time?

A. Yes, sir.

Q. Now, to what extent, and what Indians?

A. Wasco Charley moved on this Lot 2 about 1883—1882—somewhere along in there, or '83 or '84. I am not sure exactly about the year.

Court: Did you own the lot at that time?

A. No, sir.

Court: You own it now?

A. I own it now, yes. It belonged to Humason at that time—Lot 2, right where those circles are.

Q. In this connection, you may state if there is no objection, who owns Lot 3 in Section 36?

A. I do.

Q. Now, when did you say Wasco Charley commenced to fish there on this point?

A. He moved out there the same time that The Dalles Military Reservation was sold by the Government. The Indians lived on The Dalles Military Reserve there.

Q. What year did you say that was, as near as you can remember?

A. It was long about 1883 or 1884—somewhere along there. I ain't sure just exactly what year that sale was made, but I recollect it was advertised that those people that lived, squatted on that Reserve, at the Military Reserve there, had first option of purchase. It was surveyed by the Government, and laid out in lots and appraised.

Q. Never mind about that, Mr. Seufert; but after Wasco Charley moved there, did he fish on that point?

A. Oh, I don't know how early he started to fish there, but in the last 12 or 15 to 20 years that I lived up at the cannery, he generally fished at that one point there. At certain stages of the water 839 he would catch a few fish there.

Q. To what extent did he catch fish there?

A. Oh, he never caught any to sell. He fished enough for his own use and his wife.

Q. Did he ever sell any to you or The Dalles?

A. No, I never knew him to sell any.

Q. Is it a good fishing place, or a poor one?

A. It is generally considered a very poor one.

Q. Now, whereabouts did he fish with reference to the point?

A. He fished right up around behind the point, I should judge, this dividing line running out here. I think he fished just about in there.

Q. Did he fish any other place on that point there before or after it was blasted off?

A. Once in a while he went away out there, tried to fish out on the point, but he said he never could catch anything there before the Government took this off.

Q. Did he ever fish around below the point at any time?

A. No, sir; can't fish there.

Q. Did any Indian ever fish at this place where your scow was tied, below the point there, since you went there?

A. Not to my knowledge.

Q. Did they ever try to fish there, or claim the right to fish there?

A. No, sir.

Q. That is, I mean with dip net, or any of the old Indian appliances?

A. I lived there from the spring of 1885—I think I moved out to the cannery and planted the orchard—and I lived there I think until 1898. Then I moved to The Dalles, but I was out there every day of the year, outside of sometimes when I was away.

840 Q. Now, is there anything now at the point where he dipped here—at the point where he dipped, is there any artificial structure?

A. There is nothing whatever. He can fish there just the same.

Q. How far is it from that point to the wheel that Peter Jackson uses?

A. It is 75 feet from the shaft of Peter Jackson's wheel to the place where Wasco Charley fished.

Q. Have you measured it?

A. Yes, sir.

Q. Now, you may tell the Court, Mr. Seufert, after Wasco Charley left, did any one else take up fishing at that point?

A. No. Charley, off and on during the certain stage of the water, when the water was about this stage, he would go out there and fish at odd times.

Q. Who?

A. Wasco Charley.

Q. I mean, after Wasco Charley left there, did anybody go out there and fish?

A. I don't think so; just Mr. Gulick would go out there once in a while and fish, and Wasco Charley. That is all I remember of.

Q. Now, when did any Indians first make a claim of a right to fish with fish wheels on that point opposite your land?

A. Never made a claim until Sam Williams come there with his attorneys.

Q. And when did Sam Williams first come there?

A. Well, to fish with a scow?

Q. Yes.

A. Or just when he first come there in general in the country?

Q. I will ask you this way: Who did the first fish wheel fishing around that point?

841 A. Well, Charley Switzler, I think, tried the first fish wheel fishing there, and it was not successful.

Q. How did he come to try it there?

A. Well, he came up to me one time, and said there was an old scow in The Dalles he could buy, if I would help him, and he would go out there and try to fish; he thought maybe he could get some fish out there. I told him all right, "get the scow and go out there. If you can get anything, you are welcome to it." After that Jake Andrews tried it there one time, and he gave it up.

Court: Jake Andrews was from across the river?

A. He was from the Cascades. He used to live right at the cannery. He fished for me for, oh, I suppose 12 or 15 years.

Mr. Rankin: He was a Yakima Indian, wasn't he?

A. I never recognized him as a Yakima Indian.

Mr. Rankin: As a matter of fact, he was a Yakima.

A. I don't know as to that. He came from the Cascades—he was born at The Cascades, and his father always resided at the Cascades. He never fished on the Washington side with nets, to my knowledge.

Q. Well, now, under what arrangement did Andrews go out there to fish?

A. Well, he was fishing for us at that time on shares. We had the scows, and we tried it there one year, but it didn't pay. We

took the scow away and went further up stream to a better place—gave it up.

Q. Now, then, after that, who, if any one, fished there around that point?

A. Well, after that the Government came there and started to blow off that rock, and they were there a number of years blowing that off, and it was not safe for anybody to go there.

842 Q. Well, after that?

A. After that, the next one that went there was Peter Jackson.

Q. When was that?

A. That was in 1911.

Q. 1911?

A. Yes, sir.

Q. Well, how did he come to go there?

A. He built a scow, and we furnished him the material, in 1910. In the spring of 1910, he had made arrangements with Mr. Gulick to fish outside of a wheel that he had there on the opposite side of the channel when the water came up.

Q. In 1910?

A. In 1910.

Q. Tell me about that fishing in 1910?

A. He fished that year, and he didn't do very well.

Q. Who fished that year?

A. Jackson, with a scow.

Q. Was Williams with him that year, in 1910, do you know?

A. Well, he wasn't with him when I knew, but afterwards Mr. Gulick came up and said he had rented this land to Jackson and Williams for \$25, and hadn't got his money; and they had drawn all the money that was coming to them just at that time, so I told him I would see that he got his money, and paid him.

Mr. Rankin: Of course, all this talk about money is not responsive to the question.

Q. Then they went there by arrangement with you? First they went in 1910 by arrangement with you?

A. They went with Mr. Gulick in 1910.

Q. You had something to do, as I understood you, with the furnishing or making of the wheel?

A. Oh, I furnished them the material for the wheel, and Jackson built it.

843 Q. Peter Jackson built it?

A. Yes, sir.

Q. How far from this point was that fishing of Jackson in 1910, and Williams, if Williams was a partner?

A. There is a slough comes through here, and it is just about this stage of the water, the water starts to go through there.

Q. About this stage of the water?

A. Yes. Mr. Gulick owns this piece of the lot, and has a wheel there, and had a little cribbing on the opposite side of this channel,

and the water comes through there, and he allowed them to use that cribbing to tie to, to fish from, opposite his wheel.

Q. That was on his lot?

A. Yes, on this property.

Mr. Rankin: That is what he paid \$25. for up in here?

A. Yes.

Adjourned until 10 A. M.

May 18, 1915—10 a. m.

F. A. SEUFERT resumes the stand.

Direct examination continued:

Q. Now, Mr. Seufert, when the court adjourned, you were testifying about the licenses during the respective years, and the place of location on or around, or in the vicinity of this point, and you had just testified about the location of Peter Jackson in 1910, when Williams worked with him, and that that year they fished in the channel on the Gulick place. Now, what, if anything, did you have to do with that fishing that year?

A. I had nothing whatever to do with it, any more than I furnished them material to build the scow and wheel, that winter—Peter Jackson,—and he said he had arrangements with Mr. Gulick 844 to fish on his land, and I paid no more attention to it.

Q. Well, now, did they, or Sam Williams, fish on this point in dispute that year?

A. No, sir.

Q. How far from this point that year was their fishing place?

A. Well, it was on the next lot above that. I think it is Lot 2, Section 36.

Q. Well, about how far from this point would it be?

A. Oh, a quarter of a mile.

Q. Now, go on and state what was done about the fishing in 1911?

A. In 1911 they asked permission to go out there and fish on our land.

Q. Who asked permission?

A. Peter Jackson, and I told them to go there and do it.

Mr. Rankin: What does he mean by "our land"?

A. Seufert Bros. Company.

Mr. Rankin: Whereabouts?

A. Lot 3.

Q. Is that this point in question?

A. Yes, sir.

Court: That is in front of Lot 3?

A. Yes, sir.

Q. And you claimed it as lying between the meander line and the river?

A. Claimed all that.

Q. And you told them that they could go ahead and fish there?

A. I told Peter Jackson. I had nothing whatever to do with Sam Williams.

Q. That is 1911?

A. 1911.

Q. Well, now, what wheel did they use that year? The same one they had used in 1910?

A. The same one.

845 Q. The same one that you had furnished the material for, and they had paid you for the material?

A. Yes. They hadn't quite paid for it.

Mr. Rankin: I don't quite like to object, but these questions are very leading.

Mr. Bennett: If there is any question about it, I concede that they are leading.

Q. What do you say about the paying for it?

A. Peter Jackson had not had a very good season in 1910, where he was, and he was not able to pay for it, and I carried some little account over for him till 1911, and then he went out there in 1911 and fished at that point, and I think they fished there about 10 or 11 days, and then the scow got wrecked and went over the reef.

Q. Now, when you say "they", whom do you mean?

A. Peter Jackson.

Q. Well, was Sam Williams working with him?

A. When it come to the dividing of the money, they found they had caught about \$700 worth of fish there, and when it come to collecting the money on the 11th or 12th of May, somewhere there very close to that—I don't know the exact date without looking on the books—Sam Williams came up, and demanded the pay for the fish. I told him "I never knew that you were in it." He said yes, that he was in this, and he was going to draw down the money. Well, I says, "I don't know whether we have any deal with you, and you go and get Peter Jackson." And they came to the office, and the bookkeeper made out a check, and I signed the check for each one's division of the money that they had caught.

Court: Where was that wheel located now?

A. It was located exactly on the upper side of Three Mile Reef. About in here (pointing to map), in 1911.

846 Q. Was that above or below the point?

A. Above.

Q. And how far from the point now in dispute?

A. About 700 feet.

Q. About 700 feet. That was in 1911, you say?

A. Yes, sir.

Q. Now, after their scow drifted away, or was wrecked, what became of it?

A. Well, the wheel broke off going through the rapids, and the scow went down to what they call Eighteen Mile Island, about Mosier, and there some one caught it.

Q. That is below The Dalles?

A. Yes.

Mr. Bennett: You don't care about leading in matters of that kind, I suppose?

A. And then they got the scow back, and then Sam Williams claimed the scow, and would not let Peter Jackson have anything more to do with the scow.

Q. Do you know this of your own knowledge?

A. Yes, sir.

Q. Did they fish any more in 1911 after that?

A. No, sir, they had nothing to fish with.

Q. Did they ever fish in 1911 at this point now in dispute?

A. No.

Q. Well, now, what happened about the fishing that year from that time on and up to 1912?

A. Well, they didn't fish any more that year, because they had no scow.

Q. Was there any wheel on the scow that Williams had brought back?

A. No, sir.

Q. Well, now, what, if anything, was done that fall—that fall or winter or the next spring, about arranging for the fishing the next season?

847 A. In the fall or winter Peter Jackson came to me again and he said that Sam Williams, his father-in-law, claimed the scow, and would not let him have the scow.

Mr. Rankin: I object to what Peter Jackson told him. I wish you would confine the witness to what he actually knows about it, and not hearsay.

A. I know that as well.

Mr. Rankin: You know it from Peter Jackson.

Q. Never mind what he told you. What did you do.

A. I furnished another individual scow and wheel that winter of 1911 and 1912, and he went out there and fished on that same point, the season of 1912.

Q. That was above this point?

A. Yes, sir.

Q. And how far from the point in dispute?

A. About 700 feet.

Q. Who had the license that year for that point?

A. Seufert Bros. Company.

Q. And who owned the scow that Jackson was using there?

A. Well, Jackson owned it after he paid for it—caught fish enough to pay for it. I had simply furnished him the material, and he done the work himself with a few extra helpers that he got.

Q. And he was fishing under your license?

A. Yes.

Q. Now, where did Sam Williams fish that year, in 1912?

A. He fished on Mr. Rorick's land on the Washington side.

Q. On the Washington side of the river?

A. Yes, sir.

Court: Whose land was that, you say?

A. J. T. Rorick.

Mr. Bennett: That is the gentleman that was a witness here, your Honor.

Court: Oh, yes.

Q. What scow did he use over there?

A. He used the scow that Peter Jackson built in 1911.

848 Q. What did they do about a wheel?

A. Well, Sam came to me and wanted me to furnish material for a wheel, and I told him I wouldn't do it. It went on probably for several days. Mr. Rorick phoned to me and said that he had made arrangements with Sam Williams to fish on his land, and wanted to know if I would furnish him a wheel, if they would turn the fish in to the cannery at five cents a pound. Well, I told him to accommodate him, I would, but I hadn't much confidence in Sam Williams that he would do what he agreed to do, and if he would become responsible for the lumber, if Sam didn't pay for it, I would do it. And I furnished him the material.

Q. For a wheel for that scow?

A. Yes, on Mr. Rorick's say-so.

Q. How long in 1912 did he fish over there at Mr. Rorick's place under that arrangement with that scow?

A. Oh, I think some time along the latter part of July or August.

Q. And then where did he go?

A. Then he came on the Oregon side down below into a slough that is at the lower end below Three Mile Rapids.

Q. How far from this point in question?

A. Oh, I should say possibly a quarter of a mile.

Q. And did he at any time during 1912 fish at this point in dispute?

A. I think he came there along in the fall of 1912, in September.

Q. Along in September, 1912?

A. In September, or the latter part of August.

Q. And you say that was how far from the wheel that Jackson and you were operating?

A. About 700 feet.

Q. Within the 950 foot limit, then?

A. Yes, sir.

849 Q. Was Jackson operating up there under your license at that point at that time?

A. Yes, sir.

Q. Now, then, what happened in 1913, with relation to the scow? Did Williams fish on that land, or adjoining that land, claimed by you, in 1913?

A. He fished some—tried to fish some, and we tried to prevent him fishing there.

Q. Who went there first in 1913?

A. Jackson.

Q. At that point?

A. Not at that point; at the upper point.

Q. At the upper point?

A. Yes.

Q. Well, who went there at this point?

A. Williams.

Q. Did you have a scow at this particular point or not, at any time prior to 1914?

A. No, he got in there earlier in 1913. We were building some scows for some other Indians, and he got in there first, and the consequence is we didn't get in there in 1913. The water afterwards came up, and it gets so rough there that it is dangerous to take a scow around that point; so when the other scow was done for the other Indians, we didn't take it in there.

Q. Well, now, whereabouts was Peter Jackson fishing during that year?

A. The same place.

Court: You mean this upper place?

A. Yes, this upper place. He has fished there steady right along.

Q. Who had the license for the scow that year?

A. I carried the license in our own name, in order to avoid frictions with the state law with the Indians. They fish, when they fish under their own license, in a different season. In order to get them to obey the state laws, why, we carry the license in our own name, and then they have to hoist up at six o'clock Saturday evenings, and stop till six o'clock Sunday evenings, and they cannot run the wheel during the closed season according to the state law.

Q. Now, who got in there at this point in dispute first in the year 1914?

A. We did.

Q. You got in there at the point in dispute first?

A. Yes.

Q. Now, how long did you stay there?

A. Oh, I think they put the scow in there about the first of March, along in the month, nearly two months before the fishing season.

Q. Well, how long did you stay there after the fishing season?

A. Well, when one of the boys went down there to fish the scow, on the first day of May, some mishap happened, which we don't know how, but in lowering the wheel, there was something wrong with the lowering gear, and the wheel dropped on them, and broke loose and tore away the first of May, 1914.

Q. Where did it go?

A. Well, we lost the wheel. It went down the river, and we got the ferry boat to tow it in on the Oregon side and tie it up that night. And my men left it about 5:30 and came home, and about nine o'clock in the evening the steamboat men told me, on a street of The Dalles, that they passed it floating down the river at Crate's Point just after dark. Somebody turned it loose.

Q. Where did you find it?

A. We never found it.

851 Q. Now, when you put your wheel there in 1914, did you have a license for that wheel?

A. Yes, sir.

Q. After you put that wheel there in 1914, and something was wrong with it, when it dropped down and bent loose and floated down the river, what happened to the place?

A. Well, Sam Williams, I think, made several attempts to go there and we would not allow him.

Q. How long after your wheel got away that way was it before Sam Williams appeared there on the scene?

A. Oh, I should judge a week or ten days, something like that.

Q. You say you wouldn't allow him to tie up there?

A. No, sir.

Q. You claimed the shore there?

A. Yes, sir.

Q. Where was his boat tied, with reference to the shore?

A. Oh, he kept it right below the reef, along in about here, tied up out in the water. He didn't come across to the shore. He had some advice by which to keep inside of the water line, and he always kept his anchor outside of the land; just anchored off the shore.

Q. Well, did you interfere with it in any way when it was anchored off the shore that way?

A. No, sir.

Q. Well, at any time when you unloosened the boat, where was it fastened?

A. Well, the time I went down there, it wasn't at the place—it was just simply a long rope lying around the point to an eye bolt that was there; and I told the men to untie the eye bolts and throw his anchor aboard his boat, and let him alone.

Court: Where was his boat at that time?

A. It was about around in behind here, and he had the rope
852 run around the point here, with an eye bolt in the rock.

Q. Was that at the point in dispute?

A. Yes.

Mr. Rankin: When you turned it loose this last time?

A. The time I was there.

Mr. Rankin: Was that at the point in dispute then?

A. Yes. That is the only time I went down there myself to see what was going on.

Q. Now, what I want to know is, where these fastenings that you undid were, with reference to being in the water, or on top of this shore that you claim as yours?

A. They were on top of the bluff.

Q. And how far back from the water line?

A. Oh, that bluff is perpendicular there, and I suppose those bolts were back probably four or five or six feet—I don't know exactly—but they were just put right onto the edge of the top of the bluff.

Court: Who put those bolts in?

A. Well, I think the majority of them were put in there by the

Government when they had the dredge there; not really by the Government, but Wakefield & Company, the contractors.

Court: None of them were put in by you?

A. Some of them were put in by us. I don't know just exactly which individual ones. Our men put in some of them.

Q. Now, Mr. Seufert, at the ordinary stages of water in the Columbia River, outside of the freshet season, how is this shore up here in front of Lot 3, in Section 36?

A. This shore along here is all a perpendicular bluff of rocks, till about down to here.

Q. And how far is it above the water, at the ordinary stages of the river, except at freshet seasons?

A. Oh, I should judge at dead low water, it is probably 28
853 or 30 feet from the top of the bluff to the water. We measured it some time in the latter part of March after the river had raised to some extent and it was 23 feet.

Q. How far is it at the ordinary stage of water outside of freshet?

A. Oh, well, it varies. It is hard to tell what the ordinary stage of water is; but generally 10 or 12 feet, the biggest part of the year.

Q. Well, is there any time, outside of the freshet season, when this shore in front of your Lot 3 is covered with water?

A. No, sir.

Q. And even at freshet season, is it covered with water every year?

A. No, sir.

Q. About what proportion of the seasons does the extreme spring freshet bring the water over that shore?

A. Clear over that reef?

Q. Yes.

A. Oh, I should judge about five years out of ten.

Q. Now, when it does get over there, how long does it stay?

Mr. Rankin: I object to all these leading questions. I have sat here for five minutes, your Honor, hoping that the Judge would cease asking these leading questions.

Court: I don't think that last question was leading.

Mr. Rankin: There has been a series of them, your Honor, all the way through. He can ask the witness what the situation is at the stage of water.

Court: He has asked how long it remains there, when it does come over. You can answer that question.

A. Oh, it generally—when it does come a high water year, it generally comes over there, probably along about the last few days of
May, and it usually gets off there in the last few days of
854 June; not later than the first week in July anyway, when it is an extreme. Most years it ain't up there—what you would call a 32 or 34 feet stage at The Dalles—it wouldn't be up there possibly two weeks.

Q. Now, then, some of the witnesses have referred to that shore as an island. What is the fact about that?

A. There is no island.

Q. What is the fact as to whether or not at any stage of water there is a channel back of that shore point?

A. There is two.

Q. What say?

A. At different stages of the water there is two back of that shore. There is one channel takes right through here further back according to this inlet here, it comes through this inlet, and comes about through here. Then there is one comes away up around here—goes away out through there at extreme high water.

Q. Now, how much of the time—how much of the year, on an average, is the water high enough so it runs through either of those channels?

A. Well, this one here runs through every year.

Q. Well, I know, but what part of the year?

A. Oh, during the spring freshets.

Q. On an average. What say?

A. It probably starts in through there along about the middle of May, lasts in there probably till the fore part or middle of July, through this channel. This back channel, I don't think I ever saw it over two weeks in the back channel.

Q. Now, the balance of the year, except this period that you have named, is there anything to separate this shore from the main land opposite?

855 A. No, sir.

Q. During the time that you had your wheel there in 1914 and the time that you have had it in 1915, where was Peter Jackson fishing, if at all?

A. He has been fishing steady right at the same place at the upper side of that reef.

Q. Well, how did you come to put this other wheel there within less than 950 feet fixed by the law, of the Jackson wheel?

A. We just simply tried to protect Jackson with the location.

Court: And how would you protect Jackson in that way?

A. Well, by keeping others away from there.

Court: Were you operating your wheel at the same time Jackson was operating his?

A. No, sir; I wasn't operating it. There was two other Indians operating it.

Mr. Rankin: They were under your direction, were they not?

A. They had my scow, and I was buying the fish from them.

Mr. Rankin: And under your orders?

Court: They were operating within 950 feet of Jackson?

A. They were operating about 750 feet of Jackson.

Court: That was contrary to law?

A. That was only this last law that was passed. It was not decided yet whether customary places that were fished that way, and wheels that were built, whether it was construed to cover them, or not, and has not yet.

Q. Did Jackson object in any way to your having that wheel there?

A. No, sir.

Q. What, if any, arrangement did you have with him about that?

A. Didn't have any arrangement.

856 Q. Now, who got at this point in dispute with their wheel first in the year 1915—in this year?

A. We did.

Q. Did Sam Williams ever have his wheel at that point in this year?

A. No, sir.

Court: You didn't get any license for this year?

A. We have a license for the scow.

Mr. Rankin: Not for that point, though?

A. We claimed that the scow is a drifting wheel, and we don't have to get a license on a particular place for a scow fish wheel.

Court: Don't you, when you attach it to the shore?

A. No, sir. The law distinctly says that we must pay \$35 for a stationary wheel, and \$25 for a scow wheel because it is customary to float scows wherever it is convenient to fish them, and you have to float them around because you cannot fish them always at one same place.

Mr. Rankin: Just at that point, don't you make application for a particular point for a scow wheel?

A. Oh, we have, for the satisfaction of the present fish warden, who asks us to make a specific point so that he can locate where the license belongs, and that he has a license. It is for the convenience of the fish warden's office that we do that.

Q. Now, in those cases, does the license provide for a specific point, or in front of a certain lot?

A. Oh, we give a specific point under this present law, so as to avoid trouble with the fish wardens, so that when they come along and check a number, that they know that gear is fishing under a number, and the license has been paid.

Q. And that is a question between you and the fish warden as to whether you have a right to fish with the scow at other places?

857 A. Yes, sir.

Q. Now, Mr. Seufert, what do you say as to it being a crossing place of the Columbia River during the fishing season at this point in Three Mile Rapids and above it?

A. Well, they could not cross in Three Mile Rapids in the real rapids. They could cross above it, at certain stages of the river, and certain times of the river you could not cross even above it, but you could cross below it.

Q. How is it above it to land on this point at the fishing stages?

Mr. Rankin: I want to know, Judge, when you refer to this point, if you mean this old point away out here at the end, or do you mean this general larger area from here to here?

Mr. Bennett: I mean anywhere on this point where the disputed fishing right is.

Mr. Rankin: You refer particularly out here?

Mr. Bennett: Yes, I mean anywhere from this disputed point where your fish scow now is, up around the point.

A. Up as far as where Jackson's scow is, and this other scow is?

Q. Yes. The question is, what do you say as to getting across the river and landing there?

A. You couldn't land from here to there when the river is up.

Q. How about getting across the river at those points in fishing season?

A. You could not cross the river in there at all during fishing season.

Q. How is it up here?

A. Well, you could cross away up above here, and drift around here, and come into here; but you could not do that in high water. Of course a foolhardy man might undertake it, and might do it a good many times.

858 Mr. Rankin: Who might?

A. A foolhardy man.

Mr. Rankin: I thought you said a fool hired man.

A. A foolhardy man. No sensible man will take a boat and go in there in that water, and they don't do it.

Q. Now, when Sam Williams was fishing over at the Rorick cannery in 1912, and sending the fish to you, did he bring them across there?

A. Oh, he brought them across away below a lot of this stuff—away below this map—landed in here, and hauled them with teams up to the cannery.

Q. You mean below Three Mile Rapids?

A. Entirely below Three Mile Rapids.

Q. How far below Three Mile Rapids?

A. Oh, I should judge a quarter of a mile.

Q. Now, then, how is the water down there?

A. Oh, that is quiet water down where they land the boat.

Q. After you get below the rapids?

A. Yes, sir; it is really an upstream eddy below the rapids.

Q. Now, something has been said about your having wheels on the Washington side.

A. I have.

Q. At different points. How do you get the fish from those wheels across the river?

A. Well, at The Dalles rapid, we have a cable across the river. It brings the fish from the Washington side to the Oregon side. At the Three Mile Rapids, we haven't any scows down in here. They are all above there. We have a launch that goes at certain stages of the river, and then when it gets high, why, we cannot even operate the launch.

859 Q. How does the launch compare with a rowboat as to power?

Court: I guess this court will know something about that. I don't think there is any necessity of going into infinite detail about those things.

Mr. Bennett: All right, your Honor. I am always figuring as though I was trying a case before a jury. I find it hard to get away

from that. Now, there is one other question, your Honor, that I would like to ask, with reference to it, to put the matter as I view it fully before the Court, with reference to the fishery on the Washington side, up at Tumwater and at Celilo. I would like to ask Mr. Seufert if there is only one place of dipping at those points, or if there are many. I want to find out if there is only one place, for instance, at Five Mile Rapids on the Washington side—whether there is only one place to dip, or many?

Court: I don't think that throws much light on this place.

Mr. Bennett: Our only idea was, if they had plenty of dipping places over there and better places, that they would not be likely to be coming across on the Oregon shore and dipping there.

Court: That is only an inference. You better get at the fact whether they really did do it.

Mr. Bennett: Very well, your Honor.

Q. Now, when you first went there in the early eighties, you say there was no one fishing on or about this point in question?

A. Never saw anybody.

Q. Was there anybody living there, any Indian or any one?

A. There was on Lot 2, Section 1. A man lived there by the name of Jim Jackson, and he was working for a butcher firm named Jackson & Wigel, and he really got christened the name Jackson 860 son from one of the proprietors of that firm, and he has always gone by the name of Jim Jackson, or Jackson's Jim, ever since.

Q. Was he a fishing Indian?

A. No, sir. He was the man that attended the slaughter house, and killed the cattle for Jackson & Wigel at that time.

Q. What, if any, relation was he to this Peter Jackson that is fishing there now?

A. He was his father.

Q. Father of Peter Jackson that is fishing there now on the scow?

A. Yes, sir.

Q. You say he didn't fish there at all?

A. I never knew him to fish at that time.

Q. Now, the map that we have offered in evidence here shows a number of houses here on Lot 1, in Section 1, as though there is a little village there. Were those houses there when you went there?

A. No, sir, they came afterwards. This house here, marked "Vacant," was the one where Jim Jackson lived.

Q. That was there then, I take it?

A. Yes.

Q. Were there any other houses there then?

Court: What year?

A. It was 1881; shortly after Wasco Charley came and built another little house in there.

Q. Shortly afterwards?

A. Yes, I think it was about 1882 or '83 or '84, somewhere along in there.

Q. Who built these main houses that are occupied there now?

A. This house here marked "Sam Williams" was built by Wakefield & Company.

Q. Who were they?

861 A. Wakefield & Company had the contract for blowing out Three Mile Reef.

Q. Was there any other of those houses built by them?

A. Yes, I think the one that Peter Jackson lives in now was built by them for an office, and another one there was built for a powder house. Mr. Berry was superintendent of construction for Wakefield & Company. They had a contract for blowing out that reef. And he came to me and asked permission to put those houses there, and wanted to rent the ground, and I told him to go ahead and build his houses, and when he got through he could take them away, only I wasn't going to charge them any rent. When he quit he came to me and said: "We haven't any use for those houses. We will leave them."

Q. I don't care for only the mere fact of who built them. Now, at any time that you have known about that place—when you bought it, or when you went there, and since that time, has there been any platforms or scaffoldings for Indians to dry fish, or anything of that kind?

A. No, sir.

Cross-examination.

Questions by Mr. Rankin:

— Mr. Seufert, hasn't it been your policy, and a declared policy, to put the Indians off the river and back on the reservation?

A. No, sir.

Q. Haven't you stated at numerous times that the Indians ought to be off the river and back on the reservation where they belonged?

A. I said it would be better for them.

Q. Hasn't it been your policy to do that?

862 A. No, sir. While we have them there—

Q. Haven't you objected to the independent—

Mr. Bennett: He is answering the question. You didn't give him a chance.

Mr. Rankin: Counsel tells me you were further answering the question.

A. While we have them there, I make the best of it.

Court: You object to them, though, don't you?

A. Well, not in a general way, no. There are a great many of them work for me.

Q. You spoke yesterday about employing quite a number of them. You didn't want the Court to understand that you employ them in the cannery?

A. I do at times, yes.

Q. Don't you exclusively employ Chinese help in your cannery?

A. No, sir, I don't. I have got at the present time, probably, a regular crew of Chinamen, of 35; and I had probably that many

white people working in the cannery at the same time, and some Indians.

Q. Well, I am speaking of Indians. Don't you keep the Indians outside on the river?

A. I don't keep people anywhere. I hire them wherever I have work to do, and whoever comes along that is willing to do it.

Q. That is not in response to my question. I want to know if the Indians you keep aren't out on the river fishing? You don't employ them in the cannery?

A. I do employ them at times in the cannery.

Q. Very seldom, is it not?

A. Not very seldom. Whenever we have a heavy run of fish, I have some Indians.

863 Q. That is the exception when you have Indians in the cannery, rather than the rule?

A. There is no exception about my business. We hire people the year around, and we hire them as the work comes on. Sometimes we have a great deal of work to perform in one month, and very little in another month.

Q. But going back to my original question, you object to the independent Indian fisherman; that is, one having a license fishing along the stream up there, which in any way abuts on your land, do you not?

A. I do.

Q. You stated yesterday, Mr. Seufert, that at the fishing point at Three Mile Rapids, it was a poor fishing place. Explain to the court why you contested then with Sam Williams?

A. I stated what?

Q. That it was a poor fishing place.

A. Well, I was testifying to the dip net place in which they were dipping.

Q. That was a poor fishing place?

A. Yes, sir.

Q. You don't mean to tell the Court that this point is a poor fishing place?

A. I don't mean to tell the Court anything of the kind——

Q. I just want to get what your understanding is.

A. That it is a poor fishing place. It is a good fishing place at certain times. But where the Indians dip is one of the poorest places on the river for a dip net, and it is rarely used.

Q. Why should they dip there, then?

A. They don't dip there then, only Wasco Charley and some of the old Indians that live down there go there occasionally
864 and try to catch salmon. Very often they come to the cannery and tell me, "I have dipped all day long, and I haven't caught a fish, and I want a fish," and I give them one.

Q. You give them heads or tails?

A. I give them a fish. I don't give them heads or tails. I don't have to give them heads or tails, because they take that of their own free will.

Q. You testified where the Indians dipped. Then you say they don't dip there very much.

A. I am testifying that Wasco Charley, Henry Gulick, and occasionally probably Wasco Jim—Alcohol Jim, as we call him—dip at that point. But I never saw any other Indian that wanted to dip for a living, or make money, dip there. That is what I am testifying to.

Q. And, as a matter of fact, it is a good fishing place, is it not?

A. It is not a good fishing place.

Q. Well, now, Mr. Seufert, will you explain whether it is or is not a good fishing place?

A. It is not a good fishing place where those Indians dip.

Q. Then I understand you that they dip away at some other point, rather than the point where Sam Williams has heretofore claimed to have fished.

A. They dip exactly 75 feet from the shaft of Peter Jackson's scow, to that place where they dip, and they never dip any other place.

Q. Haven't they ever dipped down along this side?

A. No, sir. You couldn't dip there if you wanted to.

Q. Have they ever fished with a scow fish wheel down there?

A. The Indians?

865 Q. Yes.

A. No, not down there. A good many years ago, Charley Switzler tried it there for a season.

Q. Charley Switzler testified he tried it down below the point.

A. He tried it below the point once that I didn't know. But I didn't know him, but I knew he was up there. I knew Jake Andrews was in there.

Q. You didn't know when Charley Switzler went in there with a scow wheel?

A. Yes, I did, because he came to ask me for permission.

Q. Isn't it true, any fishing along that place has always been by your permission?

A. Along there?

Q. Yes.

A. Since I owned it, it has.

Q. Do you own that land out there?

A. Yes.

Q. Didn't you last year make application to the state to purchase this Section 36 out here?

A. My son did.

Q. Your son made application this year?

A. My son made application each year to purchase between ordinary high and low water mark.

Q. How do you mean that you own this land, if you are making application of the state to purchase it?

A. I do, because it is above ordinary high water mark.

Q. Why do you make application to purchase it, then, from the state, if you own it?

A. Because it was easy to survey and we don't know exactly which

the state really claims, which is really ordinary high and ordinary low; and in order to leave no doubts, we surveyed everything
866 that was in there and we were willing to pay the state the price.

Q. You wouldn't pay your money out for something you already owned, would you?

A. I have, a number of times.

Q. I mean on this land proposition.

A. Yes, sir, on land proposition.

Q. You claim that land, yet you are applying to the state to purchase it?

A. Yes, sir. I would rather purchase that land than go into a question between ordinary high and low water mark at any time. I would rather pay it to the state than to lawyers any time.

Q. Who were the Indians that were fishing at Lone Tree?

Mr. Bennett: He hasn't said anything about Lone Tree.

A. I don't know what you mean by Lone Tree.

Q. I mean this point in question.

A. There never was a tree there to my knowledge.

Court: No one said there was a tree out at the point. There was a tree three-quarters of a mile back.

A. Some have testified that there was a tree back on this lot here, in another section?

Q. Yes.

A. But there is no tree ever was out on that—

Q. No, there is no claim that there ever was.

Court: No one has testified to that.

Q. A tree back here in Section 1, somewhere in here, did you ever see a tree?

A. I never saw a tree.

Q. Your knowledge of that river doesn't go back of 1880, does it?

A. No, sir.

Q. Now, who were the Indians that fished off this point,
867 and the years that they fished there?

A. Well, now you confuse things. Off the point, or do you mean at this fishing place where the Indians were accustomed to fish?

Q. I mean here, Mr. Seufert. I mean from around a little above where Peter Jackson's wheel is, clear around that point, both before and after it was blasted off by the Government, after the change was made, down to below where your scow is at the present time.

A. Well, you are covering such a vast radius with your question.

Q. How far is that around the point?

A. In there?

Q. Yes.

A. Round to this point, probably a thousand feet before this point was blowed off.

Q. Yes. I want to know the Indians who fished there, and the dates,

A. The only ones that I ever saw fishing there was Wasco Charley and Alcohol Jim.

Court: Where did they fish?

A. They fished at that place, 75 feet above where Jackson's scow lays.

Court: They never fished around the point, then?

A. No. Wasco Charley, years ago, before this point was blown out here, used to go in dead low water away out there, but he always told me he couldn't catch anything. He went out there to see if he could catch a fish, but he couldn't catch anything to speak of.

Q. Jake Andrews fished there, didn't he?

A. No, sir.

Q. Didn't you testify that Jake Andrews fished there, on direct examination?

A. No, sir.

868 Court: Didn't he come over there with the scow?

A. Jake Andrews worked for me with scows. He tried it out here where Jackson was. The water was so rough and dangerous, he just tried a short time, and couldn't make anything.

Q. Isn't it a fact, Mr. Seufert, that Peter Jackson doesn't fish right at that point all the time, but as the water goes down, he drops down around the point?

A. He does not.

Q. He doesn't do that?

A. No, sir; he never did.

Q. Don't they ever change those scow wheels?

A. Yes.

Q. You want the Court to understand that he doesn't drop down at all; that he fishes right at that point all the time from the beginning to the end of the season?

A. He probably drops back 40 or 50 feet, something like that.

Q. Don't he drop down 200 feet?

A. No, sir, he couldn't drop down 200 feet.

Q. Why?

A. He would be right in the swift rapids, and he is fishing toward the upper end of the rapids.

Q. Couldn't he drop down 100 feet?

A. No, sir.

Q. Could he drop down 700 feet?

A. He couldn't drop through there at all, in high water.

Q. We are not talking about high water. Can he drop there?

A. At low stages of water, you can do most anything there.

Q. Now, didn't Sam Williams fish there in 1910, and didn't you see him fishing there?

A. No, sir, he didn't fish there in 1910.

Q. Then the testimony of your witness, Mr. Gulick, that he did fish there, was erroneous?

869 A. Mr. Gulick testified to the truth, because he said he fished right there in front of his land.

Q. He also said, did he not, that he fished out on this

point—he paid \$25 for fishing out on this point, but he fished down there also?

A. He never fished up on that point. It is construing his testimony wrong when you say it, and you know it.

Q. Didn't he fish there in 1911, in partnership with Peter Jackson?

A. At the lower end, he did not.

Q. Didn't he fish there in 1912?

A. Yes.

Q. You didn't interfere with him in 1912, did you?

A. We just gave him notice to keep away from there, that is all.

Q. What kind of notice was that?

A. Oh, we told him we didn't want him to come around there.

Q. Who told him that?

A. I told him at different times, and my boys told him.

Q. Under your directions?

A. Yes, sir. And my men told him.

Q. And that was the first year—1912—that was the first year that Sam sold his fish to any person other than yourself, wasn't it?

A. Sam never sold any fish to me, but when he fished on Rorick's place, and only then until he paid for the material that I had furnished him and Rorick. That is the only time Sam sold fish to me.

Q. And he paid for all that, didn't he?

A. I took it out of the fish bill, and paid him the balance in cash.

Q. Then you paid him for fish that he caught in 1910, did you not?

A. I had nothing to do with his fishing in 1910. I paid him exactly what Jackson told me that him and Sam were to divide that money, and I paid accordingly.

Q. You paid him, then, for the fish in 1910?

A. I paid Jackson, and Jackson told me to split the money
870 in two, and each one took his check.

Q. You paid Williams directly, didn't you, the money?

A. I paid him a check.

Q. Directly to Williams?

A. Directly to Williams.

Court: We understand that, I think.

Mr. Rankin: Very well, your Honor. I would like to get some testimony, is all.

Q. Now, how many times have you personally gone down and interfered with him——

A. Once.

Q. And driven Sam off this point, Mr. Seufert?

A. Once.

Q. Only once, personally? And at other times, you have sent down your employees?

A. Employees working down there had instructions to keep him off.

Q. Then to further interfere, you built a stone wall along there—cement wall?

A. No, sir; not to interfere.

Q. What?

A. Not to interfere.

Q. What is the purpose of the stone wall?

A. My men constructed that in order to keep a scow there safely, they wanted a wall to spar from—they wanted a dock there, so they could fasten their scow to, so when the water got rough and the wind got to hard blowing, and Sundays, when they had to hoist the wheel and a heavy storm came up, that they would have something to keep them from pounding on the rocks,—something strong enough to spar from.

Q. You labeled that "Seufert's Dock No. 1"?

A. Yes, sir.

Q. Fishing wheels have fished there before without the
871 assistance of that dock?

A. Yes. They could fish there better, though, with the assistance of it. That is the reason we constructed it.

Q. You didn't put that wall there until after the meeting of the fish board commission here?

A. We put it there just as soon as we had time to spare our men from other work.

Q. It was after the meeting of the fish board?

A. Yes, sir.

Q. Now, Mr. Seufert, the first time that you ever fished at this point in question was in 1914, about August, when you got license No. 0-1?

A. I never fished there myself.

Q. That was the first time you ever had a license for that point, was it not?

A. When?

Q. August last year?

A. I think you are mistaken on that.

Q. Isn't that the first time you had a license for that point?

A. No, sir.

Q. When, at other times, did you have a license for it?

A. I think we had a license there in 1912 and '13 and '14.

Q. Where are those licenses?

A. They are on record.

Q. You have not produced them here, have you?

A. I think probably I could very easily do so.

Q. I wish you would do so, Mr. Seufert.

A. All right.

Q. You testified on direct examination, Mr. Seufert, about putting bolts in the rocks up there. There are bolts right at this point where Sam Williams claims to have fished, and where you
872 now have your scow, are there not?

A. Yes.

Q. Now, there is one bolt in there which you testified the contractors put in there—one pin?

A. I didn't testify to a pin.

Q. What did you say?

A. I said a ring bolt was put in there, my men told me by the contractors.

Q. Now, there are other pins in there that you have not had put in, aren't there?

A. I don't know anything about that.

Q. You haven't observed that?

A. There is a number of pins there. My men put some of them in. I don't know whether they put them all in, or not.

Q. Do you know whether Sam Williams put in some of those other pins?

A. I don't know anything about it.

Q. He might have done so, and you wouldn't know it?

A. Certainly. He has thrown my tools all along there in the river, and I didn't know it.

Q. You have thrown his anchors and cables in the river?

A. No, sir, I never threw his anchors and cables in the river.

Q. Your employes have?

A. My employes found some old cable there, fastened to those rings, and they measured the cable, and made a list of what it was, and threw it off our land.

Q. Have you that list?

A. I have.

Q. Have you it with you?

A. No, sir.

Q. How much of that fishing place, including Three Mile Rapids, along the bank on both sides, do you control, Mr. Seufert?

A. It is immaterial, I should think, what I control or what I own.

873 Q. You control about seven miles on each side of the river, don't you?

Objected to.

A. That is for the Judge to say, whether I should give you a statement of my personal affairs or not. If the Judge asks me to do it, I shall do it.

Court: What is the question?

Mr. Rankin: I am asking him, for the purpose of showing what control he has along there, including Three Mile Rapids, how much of this river bank on each side he controls.

Court: You can answer that question.

A. I haven't any idea exactly. We control quite a large territory of land there; not control it, but we own it.

Q. Just for reference, Mr. Seufert, this is Three Mile down here. Now, Mr. Seufert, you also have fisheries up in here, don't you?

A. Yes, sir.

Q. Don't you control practically all that bank for seven miles on each side?

A. I don't control it.

Court: I think you have gone far enough with that.

A. I don't think it is a crime any more in this state for a man to own land.

Q. You don't know anything about this fishing place at the time of the treaty in 1855?

A. No, sir; I was born in 1852.

Q. And came to the river in 1880, I understand you?

A. Yes, sir.

Q. And in speaking about whether the Indians have crossed from the other side or not, you are only mentioning the recent years?

A. Well, I am mentioning what practical experience has taught me on that river, to keep away from the water that was dangerous, and I don't think that an Indian a hundred years ago or a
874 thousand years ago, or at the present day, is any different at either time, when it comes to committing himself to danger,—no more so than a white man.

Q. You think it is not impossible, is it, Mr. Seufert, for them to have crossed the Columbia River there?

A. There is nothing impossible. There is only one thing in the world impossible. The Lord Almighty has never found a rock so big but what he could shake it.

Court: That is not evidence. We better get at something that is tangible.

Mr. Rankin: I am trying to, your Honor.

Q. It is not improbable that Indians should have crossed there?

A. There is nothing improbable about crossing there. Any man might take a chance of crossing there.

Q. You don't have to take a chance, do you? You remember the time I was up there, Mr. Seufert?

A. At that stage of the water, you can cross to your heart's content.

Q. You sent myself and my wife out from the cannery, and we landed on this point of land.

A. I sent you down from the cannery, and landed you right in here.

Q. Didn't land out on the point. I mean along in this little lagoon, or whatever you want to call it.

A. There is no lagoon about it. There is a little eddy comes back in here. This is all water over here.

Q. We landed over here.

A. We landed you there, on a little sand bar there, where we anchored the scows in the winter time, in dead low water. You went out on top of this rock, walked out there, and took a view of the river.

Q. That is correct. You are President of the Seufert Bros. Company, are you not?

875 A. I am president and I own 98 per cent of the stock.

Q. And the rest of it is owned by your sons?

A. Yes, sir.

Q. There is no one else interested in the concern?

A. Never was.

Q. Except your brother, a long while ago?

Examination by the Court:

Q. Mr. Seufert, have you seen Indians fishing there on that point from time to time, from 1883 on down?

A. No, Judge, very rarely. It takes a certain stage of the water that they can catch any fish there at all. They cannot catch any fish there, as a rule, only possibly between the 10th to the 15th of May, and possibly the fore part of June. Then the water either gets too high, or the other time it is too low, and they cannot do any fishing. They way they fish there is not exactly by a dip net, although they do it by a dip net.

Q. There is testimony here, Mr. Seufert, that the Indians fished there, the Wasco tribe made that a fishing place, a point for catching fish, and also that the Yakimas came across from the Washington side over there and fished at that point. Now, what have you observed as to that, as to the tendency of the Indians to fish at that point, since you became acquainted with it in 1883?

A. They have never attempted any such thing in all those years, and those Indians that really live on there, on that land, when they want a fish they come up past the cannery and go above the cannery, in The Dalles Rapids, and get their fish; and they have done it always, and done it by my permission. They used my roads, and they used my bridges, and they have my consent to do it.

Q. You say, then, that it hasn't been the custom of Indians to fish on that point since you have been acquainted with the place?

A. Yes, sir.

876 Q. You make exceptions, however, for the point where—

A. I make exceptions for Wasco Charley and Alcohol Jim, who occasionally go out there and catch an odd fish at certain times of the year when the water is just right that they can do it. At other times of the year they don't do it, and can't do it.

Q. What do you say as to that being a usual and accustomed place to fish, where Jackson fishes now?

A. Where Jackson's scow fishes, there never was any fishing there.

Q. I mean, where they fish with nets?

A. 75 feet above there is where these Indians in later years, these old people that live there, they go out there occasionally and catch a fish. But I don't believe before the whites came, before this treaty was made, when these rivers teemed with fish, that an Indian would waste his time at such a place, when he could go to another place and with dip net, in a few hours, throw them out by the ton.

Q. I am asking your knowledge of it.

A. My knowledge is that it is not a fishing place.

Q. Well, around the point now, down the river from where Jackson's boat is, is there any fishing point there for Indians to fish with a net?

A. No, sir, never was.

Q. Or with a spear? Could they fish off those rocks with a spear?

A. No, sir, I never saw them with net or spear at that point. They were always up in Five Mile Rapids.

Q. You say Indians never have fished down below where Jackson is fishing now—down below the point?

A. I don't believe they ever did.

Q. So far as you know?

A. As far as I know, they never did. I don't believe it is possible, with their mode of fishing, that they would fish at a point with the current the way it is now.

Q. Is there a good fishing point there?

A. It is a short fishing point. If the water is just exactly right, and the water is riley, the scows do very well for a short time, but they haven't made any money.

Q. You are insistent, however, upon retaining that point?

A. I am insistent as to retaining my rights as to my river frontage.

Q. You, of course, think that Sam Williams, when he came there with his scow, was trespassing on your premises?

A. He came there with that intent.

Q. Is that the reason you turned his scow loose?

A. Yes, sir. He came there with absolutely the intent of setting himself upon my land. Now, I will explain to the court—I don't know whether the learned attorney here will allow me to do it or not—but the trouble first came up over these two lots. In 1871 Orlando Humason bought these two lots from The Dalles Military Road Company. After he died, a number of years, I bought it from the Humason estate, and they gave me a warranty deed for those two lots, excepting barring a law suit that was then with The Dalles Military Road Company, as to the land and title of the land, in controversy with the Government. And I took that deed. About three years ago, one day a lady by the name of Blanche Stewart filed a homestead entry upon these two lots. I notified the Humason people that they had given me a warranty deed, and that there was a flaw in their title. They immediately sent their attorney up there and started to straighten up their title. In 1896, when they cancelled the Northern Pacific Land Grant on the Washington side for not building their railroad down the Columbia River, the man that cancelled that grant, cancelled these two forties as being in the

878 Northern Pacific land grant, and they stood open on the Land Office map until that time. The Humason estate took this thing up, and in the month of February, after numerous appeals and rehearings, in the General Land Office at Washington, the title was awarded to us, because the Seuferts bought in our name, as the deed stood in our name. There is where this trouble came from. And immediately that Sam Williams saw that this woman filed on these two lots, he filed an Indian baby of seven months on there as an Indian allotment, and tried to saddle the Indian claim on there by this baby, and the Land Department, through all its phases, ruled them out.

Mr. Rankin: That was a daughter of Pete Jackson, was it not?

A. Yes. That is the history of the trouble.

Redirect examination:

Q. Now, did your objection to Sam Williams fishing there have anything to do with whom he sold the fish to?

A. No; I don't care who he sold his fish to.

Q. Now, in relation to this wall that counsel has asked you about, and seems to think you built for some ulterior purpose, has Sam Williams built a wall like that in front of his property?

A. Well, he took up a homestead just below there, and I have been told that he has constructed concrete monuments to run his scow to—tie to.

Mr. Rankin: That is hearsay and not competent evidence, of course.

Q. How far is that below?

A. Half a mile.

Q. That is in front of his homestead?

A. Yes, sir.

Witness excused.

879 FRANCIS A. SEUFERT, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

— Mr. Seufert, do you recognize this map?

A. I do.

Q. I wish you would state whether or not it is a correct map of the Columbia River and the immediate vicinity from Celilo down to The Dalles.

A. It is.

Q. Now, I wish you would step here, if you will, and indicate on that map where Celilo is.

A. Celilo is right here (pointing to map).

Court: That is Celilo up there?

A. Right here on the Oregon side.

Q. Now, is there any difference between—has Celilo always been in the same place?

A. It has always been in the same place, excepting the station is now here; and when I first knew it, the station was there of the O. R. & N. Company.

Q. What is this called now up here, where the word "Celilo" is?

A. It is all called Celilo.

Q. Has it any name different from that? Old Celilo or New Celilo, or anything of that kind?

A. Oh, well, I suppose some people term it old Celilo.

Q. Is there any place they call New Celilo?

880 A. The station merely was moved for convenience, because there were more people here than there. There is more people over there than here, and the O. R. & N. Company moved the station here.

Q. Indicate to the Court where Ten Mile Rapids, that has been mentioned in the testimony, is here.

A. It is right there (pointing to map).

Q. Now, indicate where Five Mile Rapids is on this map.

A. From this point to this point; that is the head of Five Mile, that is the foot of Five Mile Rapids, and it ends in the big eddy.

Q. I wish you would mark with this pencil, first mark with a letter "A" with a yellow pencil where Celilo now is.

Court: Doesn't that show on the map, Judge, where Celilo is?

Mr. Bennett: Maybe it does, your Honor, but it might be misleading. Here is the old Celilo. Down here is New Celilo.

A. It is shown by some buildings.

Q. Now mark with a letter "B" where Ten Mile Rapids is.

Court: That shows on the map. Isn't it so marked?

Mr. Bennett: Yes, it is marked. You need not mark that.

Q. Is Ten Mile Rapids at the place which is lettered Ten Mile Rapids on the map?

A. Yes, sir.

Q. Now, is Five Mile Rapids at the place that is lettered Five Mile Rapids on the map?

A. Yes, sir.

Q. How long is that rapids?

A. Approximately two miles.

Court: How far?

A. Two miles from here to there, approximately.

881 Q. About how long is Ten Rapids?

A. About a mile from here to there, swift water.

Q. That is, the rapids are about that long?

A. Yes, the rapids are about a mile long there, approximately.

Q. Now, where is Big Eddy on this map?

A. Right here (points to map).

Q. You may mark that. Is that marked "Big Eddy"?

A. It is marked "Big Eddy."

Q. Whereabouts is the mouth of Five Mile on the map?

A. Right here. It is marked "Five Mile Creek."

Q. Whereabouts is your cannery?

A. Right on this point.

Q. That isn't marked, is it? You may mark that with a letter "B." (Witness does so.)

Q. Now, whereabouts is the point in dispute on this map?

A. Right here.

Q. You may mark that with a letter "C." Mark it a little bit back from the point, because we may have to have some testimony about that being cut off there. (Witness does so.)

Q. Now, where is The Dalles?

A. Right here.

Q. Where is the point called Covington Point?

A. Right here.

Court: You have that wrong, haven't you, Mr. Seufert? Covington Point is higher up, isn't it?

A. Oh, yes, sir; here. My glasses aren't very good.

Q. Mark that with a letter "D." (Witness does so.) How far is it from the point in dispute to Covington Point?

A. From the Three Mile Point to Covington Point?

Q. Yes.

882 A. About three-quarters of a mile.

Q. How far is it from Covington Point up to your cannery?

A. Less than a quarter.

Q. Now, whereabouts on that map is the Indian village of Skein or Skin-pah?

A. Right in here.

Q. Just mark a circle big enough to include that with this red pencil, where that village is. (Witness makes a circle.)

Q. Now, where on the map is the village of Skein? Mark that with a "W" now.

Mr. Rankin: That is what you asked him, the village of Skein.

Mr. Bennett: I meant Wish-ham.

Q. Now, mark with a circle where the village of Skein is. (Witness does so.) Now, mark that in the circle with an "S."

Mr. Bennett: We offer this in evidence.

Mr. Rankin: It is a United States Engineer's Map, isn't it?

Q. Where did that come from?

A. United States Engineer's office.

Mr. Bennett: We offer it in evidence.

Mr. Rankin: It is a continued segment of Government's Exhibit No. 6, is it not?

Mr. Bennett: I don't know. It may be different in some particulars. They have got a great number of maps down there. I don't know about that.

Mr. Rankin: No objection anyhow, your Honor.

Court: Very well; let it be admitted.

Marked "Defendant's Exhibit G."

883 Mr. Bennett: That is all on this particular line. I desire, if the Court will permit, to call Mr. Seufert in relation to other matters.

Court: Very well. Do you want to cross-examine in relation to this map?

Mr. Rankin: Yes, your Honor.

Cross-examination.

Questions by Mr. Rankin:

— Mr. Seufert, about how far is it on this map, which is your Exhibit G, from The Dalles to the head of Three Mile Rapids, at this point in question, marked "C," I believe?

Mr. Bennett: I object to that, your Honor, because it is not fair. He has not stated that that was the head of Three Mile Rapids at that point.

Mr. Rankin: Well, the point "C." I didn't intend to be misleading.

A. About two miles.

Q. About two miles. How long are those rapids there from the head at point "C" down to a point through the letter "r" in Three? What is that distance?

Mr. Bennett: That is subject to the same objection. He assumes that the head was at point "C."

Mr. Rankin: I said from the point "C" to a line drawn through the letter "r" in Three.

Mr. Bennett: I thought you included in your question "from the head of the rapids."

Mr. Rankin: No, I am not begging that point at all.

884 A. You mean from the exact point to where the rapids end below?

Q. Where is the head of Three Mile Rapids?

Mr. Rankin: Just cancel that question.

A. The head of Three Mile Rapids?

Q. Yes.

A. Right in about there.

Q. Are there any rapids between this point and here?

A. Yes, it is all swift water there.

Q. Well, are there any rapids? What do you mean by rapids?

A. Swift water.

Q. It is swift water all through that river, isn't it?

A. Some places; some places it is not swift.

Q. Do you mean to say that there is any swift water between a point on this map at the letter "r" in Rapids down to the head of these rocks in here?

A. Yes.

Q. There are rapids in here where it runs over rocks?

A. That is the channel that I am referring to; not over rocks. That is the channel of the river.

Q. It runs over rocks down through here, doesn't it?

A. You mean the bottom of the river?

Q. I mean the river itself runs over rocks all through there?

A. I have never visited the bottom of the river, but I suppose it is rocks same as it is on the side.

Q. I am not asking you about the bottom of the river. Is the water the same through this part marked Three Mile on the map as it is through that portion above the end of the word "Mile" up to

the word "Rapids"? Is it the same character of water through there?

885 A. You mean the water is the same velocity from there to here?

Q. I mean the same character of water.

A. Same character of water.

Q. It is just the same, is it?

A. Practically, yes.

Q. What do you mean by practically?

A. Well, the water varies. One place there is a whirlpool; another place it is swift; next place it is a whirlpool again. So you can't say that the water—

Q. Isn't it rougher and running over rocks and through narrow channels from this point here down to here—meaning from the end of the word "Mile" to the end of the word "Three," than it is from the beginning of the word "Rapids" to the end of the word "Mile"?

A. The river is narrow there; it is wide here on account of this eddy. It is exceptionally narrow again there and gradually widens out down here.

Q. That is not the question. Just answer my question. I asked the character of that water. Isn't it rougher?

A. It is rough water.

Q. Dashed into foam there, this portion that I have first indicated?

A. Here it is dashed into foam, and there it is so swift it can't dash into foam.

Q. No foam there at all?

A. No, I don't say no foam at all. You don't want to misconstrue my answer.

Q. There is no foam there, that portion of the water between the word "Rapids" and the word "Mile"?

A. I have seen it as white as your collar with foam.

886 Q. As a matter of fact, you can get down there with boats all right, can't you?

A. Yes, you can go down. It is not so easy to come up, though.

Q. You have a boat going up and down there many times, yourself, haven't you?

A. No, sir, I have not.

Q. At low stages of the water it is not difficult to go up and down there, is it?

A. Yes, sir. It is difficult all the time.

Court: Mr. Rankin, you are getting out of cross-examination concerning the map.

Mr. Rankin: All right, your Honor.

Q. Now, how far is it from the mouth of Five Mile to this point here, marked "42-L"?

A. A little less than half a mile.

Mr. Bennett: That is, from Covington Point?

A. From the mouth of Five Mile to a little below the mouth of the canal.

Q. A little below the mouth of the canal. That is good. How far is it from the village of Wish-ham down here to the point "C"?

A. Oh, I should judge that is a little better than three miles.

Q. Is that in a direct line?

A. In a direct line.

Q. And how far is it from the point "W," the Wish-ham that you have marked, to the point Skein up here, the village you have marked?

A. Oh, I should judge it is probably between six and seven miles.

Q. And how far up here to Celilo Falls from the point "C"?

887 A. From the point "C" to Celilo Falls?

Q. Yes, by the way that you would travel, not in a direct line?

A. You mean along the railroad track?

Q. No, by the way of the river and the river banks.

A. I never travel along the river banks.

Q. How far do you think it is?

A. Along the river bank, taking in all the curves of the river?

Q. General line. How far is it by railroad, then?

A. Well, it is about 11 miles from Three Mile to Celilo Station.

Q. Celilo Station. That is point "A"?

A. Yes.

Q. Eleven miles from there to here?

Redirect examination:

Q. Now Mr. Seufert, you have indicated this point here as the upper point of the rapids?

A. Yes, sir.

Q. What is the character of the river from that point up to the point you have marked "D"?—Covington Point?

A. Well, the river is probably one-third wider in there and is not so swift, and large whirlpools in there, what you call an eddy.

Q. How is it at the point you have marked "D"—Covington Point?

A. There it is very swift on account, it is narrow.

Q. What do you say as to whether or not that is rapids?

A. That is rapids.

Recross-examination:

Q. Same kind of rapids as down below here; this point?

A. Similar, similar.

888 Q. Three Mile. Similar. Well, is it the same with respect to navigation? Is it just the same?

A. Same.

Q. Same thing?

A. Practically.

Q. Now, in 1914, the fall of 1914, you were aware of the time of my visit up there, weren't you, Mr. Seufert?

A. Yes. I am sorry of it, too.

Q. And you remember your son Frank and my wife and myself?

A. Yes, sir.

Q. With Hank Whitecomb, was it?

A. Yes.

Q. Got in the boat here at your cannery and went down here, landed on this point along here.

A. You didn't land on the point. You landed in that eddy.

Q. We landed up here. We didn't land out in the edge of this eddy.

A. You landed about two-thirds back in that eddy on that little sand-bar. You landed about there (pointing to map).

Mr. Rankin: Let's mark that. Marked "X."

A. A little further back, if anything.

Q. We went down and came back in a launch.

A. Yes. But do you know that in 1914 the river had been improved by the Government to what it was formerly? If you don't, I want to tell you.

Redirect examination:

Q. What stage of water was it at that time, Mr. Seufert?

A. Low water.

Recross-examination:

Q. The wheels were fishing down here, though, were they not, at that time when I went down there?

A. If I recollect right, I think you were there in the close season or afterwards.

889 Q. Weren't there two wheels there, one by Peter Jackson—

A. When you was down there?

Q. Yes.

A. Well, they might have been there, but I don't know whether they were fishing or not, unless you can tell me the exact date you were there.

Q. And there were two wheels there, one Peter Jackson and one down below?

A. I was not there the day you were there.

Q. Don't you know those two wheels are located there?

A. Those wheels are located there, but I don't know whether they were there when you were there, because I don't know what time of year you were there any more than it was in low water.

Excused.

890 ROBERT J. GILMORE, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination:

Questions by Mr. Bennett:

— Mr. Gilmore, whereabouts do you live now?

A. I am living in Hood River now.

Q. Have you ever lived in the vicinity of the Big Eddy, Three Mile Rapids and Five Mile Rapids, sometimes known as Tumwater?

A. Yes, sir; I have lived there.

Q. How far from there did you live?

A. From Tumwater?

Q. Yes, from Tumwater and from all these points.

A. About two and a half miles, I should say, or three miles from some of them. You see the river run right around our place; come right around; turned this way, and we was about two and a half miles, just above the Shuster place, what we called Chipman's Pocket at that time. It was just as near, or about the same proposition from our place to Chiepmann's Pocket and around by The Dalles and up by Three Mile Rapids and Five Mile Rapids; just bends of the river went right around; run right around; made it about the same distance.

Q. How far was it from your place to the Big Eddy?

A. A little over two miles.

Q. Do you know where Three Mile Rapids is?

A. Yes, sir.

Q. How far was it from your place to the river at that point?

A. Well, Three Mile Rapids was a little over two miles.

891 Q. How long and what years did you live at that place?

A. I went there in the fall of 1871 and was there till about 1876 permanently.

Court: Was that on the north side of the river?

A. Yes, sir; it is on the north bank.

Q. Then how was it from that time on?

A. From 1876 till 1890 I was not permanently there. My folks lived there. I was there quite frequently—I mean 1900 in place of 1890—1900—and then from 1900 on till 1914 I was there permanently.

Q. Now, between those times from 1876 to 1900, how often were you there and how would you come to be there during those times?

A. Oh, at least half a dozen times a year—probably most every month I would be home.

Q. Now, your father lived there, did he?

A. Yes, he was living there at that time.

Q. How old a man are you?

A. I will—I ain't like the women—I will tell it. I am 67 years old.

Q. How old were you when you first came there to that place?

A. Well, I should judge about 21 or 22—22 or 23 years old.

Q. You were a man grown, yourself?

A. Yes.

Q. Now, while you lived there from 1871, was it, until 1876?

A. Yes, 1871 to 1876.

Q. In what business were you engaged?

A. Well, I was running the ranch for my father. We was milking some cows and doing other business. I was running the—just what you might call ranch work.

Q. And when you went back there in 1900 up to 1914, 892 what business were you engaged in?

A. Yes, 1914, when I sold out.

Q. Yes. I say, what business were you engaged in during those years?

A. Well, I was part of the time in the dairy business; That is, I was later, afterwards. I was broke when I went back there, and I had to pick up. As soon as I got hold of some cows, I went in the dairy business.

Q. Now, did any of your land come closer to the river than where your house was?

A. What is that?

Q. Was there any part of your land that was closer to the river than where you lived? Did your land come closer to the river anywhere's than where you lived, than the house?

A. Well, I could not say as to that. It is virtually. You see, we had all the east and west line. All on the east and west line was pretty near the same distance. There wasn't but very little difference on the east and west line in any part of our land. It was about the same distance from the whole of it.

Q. How about the south part of your land?

A. Well, that is just what I say. All the south part of the land was just about the same distance from the water all the way around.

Q. Well, about how far was the closest place on your land to the river?

A. Well, the closest place, as I said, about two miles, right close to it.

Q. Your house where you lived was about as close as any part of your land?

A. Yes, about as close. Well, no. Where we lived the land 893 would be about, oh, probably a quarter closer.

Q. Now, was there a county road running through that country from Goldendale to The Dalles?

A. Yes, there is a county road running right through there.

Q. How long has that road been there, been used, as far as you know?

A. Well, it was there when I came there.

Q. What was the reputation as to how long it had been there?

A. Well, I never really—I don't really know how much longer it had been there, but it is an old established road. It was there in the early days.

Q. Where does that road run, with reference to your house?

A. It runs probably 75 yards in front of the house.

Q. Now, what road was traveled by the white people and by the Indians from the Yakima Reservation in going from the Reservation to The Dalles, or to the river, in the early days?

A. Well, this main road that run right by the house was all the road there was there at that time. That is all the main traveled road—I mean a road, what is called a county road, that went through there.

Q. Where did the Indians come from, from which direction, when they came from the Reservation?

A. When they came from the Reservation?

Q. Yes.

A. Well, they would be coming south or pretty near it.

Q. Will counsel permit me to lead you—would they be coming from towards Goldendale?

A. They would be coming from Goldendale.

Q. That is what I am getting at. Now, what official position did your father occupy over there during those early years?

A. What position?

Q. Yes.

A. Well, you mean official position?

Q. Yes.

A. He was Justice of the Peace there for as long as he lived; and then he was Probate Judge there for a couple of terms.

Q. I don't care about that. I am only caring for that part of it that might bring him in contact with the Indians.

A. Oh, he was a Justice of the Peace.

Q. Now, as Justice of the Peace, what, if anything, did he have to do with the Indian troubles and affairs?

Mr. Rankin: That may be a very general question, your Honor. I would like to know in what particular. If not with fishing rights, I would object to it as incompetent.

Court: We will see what it develops into.

Mr. Bennett: I am just trying to show, your Honor, the opportunities it gave this witness to know. That is the idea.

A. He acted as a kind of a peacemaker. That is, he settled all disputes at that time amongst the Indians, amongst themselves, and even with the whites and the Indians. They used to have some pretty good trials there. Captain Jack came in there one time, and cut the Indians' fences.

Q. Now, in those early days, when the Indians came over from the Yakima Reservation, whereabouts would they leave the main road to go to the river?

A. Well, if they went direct to the fishery, they would leave the main road about two miles above our place and go down through what is called Colwash Bottom, if they went direct to the fishery.

Q. That would be by Mr. Brun's place?

895 A. Yes; that is, the side of Mr. Brun's place. Well, I think it is on part of his land now.

Q. In the early days, how did they, as a matter of fact, come, with reference to coming by your place or not?

A. They didn't come by our place other than to leave their outfit. They would come down there frequently and—father pastured their horses at that time, and they would frequently come down there and leave their horses; and then in the first place they would go to the Indian camp and unload their stuff. When they was fishing they would go down there, unload their stuff, then come back up there and leave their horses. Sometimes they would camp there.

Q. Could you talk to them in those days?

A. Oh, yes.

Q. In what language would you talk to them?

A. Why, I would talk jargon.

Q. You talked jargon?

A. But then there was quite a few of them that could talk. If you didn't talk jargon to them they could talk English.

Q. Either jargon or English, according to whether they could talk English or not?

A. Yes, sir.

Q. Now, did you hear the Indians talk during those days, and during all the days that you have been about there, as to where their usual and accustomed places to fish were? That is, the usual and accustomed places of the Indians on the north side, now known as the Yakima Indians?

A. Yes, sir. I talked with them and seen them fishing too.

Q. Have you been at their fishing grounds?

A. Yes, sir.

896 Q. Now, from what you heard among the Indians and what you saw, where were the usual and accustomed places of the Indians on the north side?

A. Well, the usual places was at Tumwater and up there just below Celilo.

Q. Just below Celilo?

A. Yes.

Court: Tumwater is on the Ten Mile Rapids?

A. Ten Mile, yes. No, not Ten Mile Rapids; it is above there.

Court: Above Ten Mile Rapids?

A. That is, the one fishery was about Ten Mile Rapids.

Court: Is that what is called Tumwater?

A. No, Tumwater is down below.

Court: On Five Mile?

A. Tumwater is the Five Mile Rapids.

Q. Tumwater, as you knew it then, and as the Indians talk about it, was what you now call Five Mile Rapids?

A. Yes, sir. What you call now Five Mile Rapids.

Q. Now, what do you say as to whether or not the Indians ever went along the road over to The Dalles and brought back fish from The Dalles?

Mr. Rankin: That is very leading, your Honor. I expect I shall have to make this objection several times. He can state what he

saw. But it has been a habit, I notice, from the past testimony, we had to simply lead the witness through. I feel as much reluctance as possible about objecting; but I do dislike the Judge to put the evidence in the mouth of a witness.

Mr. Bennett: Now, your Honor, we are proving a negative. I know of no other way to prove a negative.

Court: I will overrule the objection.

897 A. I never saw them going to The Dalles to fish. I have seen them go to The Dalles with fish.

Court: Going to The Dalles with fish?

A. Going to The Dalles with fish. They used to take their fish over there and sell them. Not the Yakimas, mind you. These were Columbia Indians. If these Yakima Indians went over there and had any fish—I think they used to come down there for fish for themselves, you know—I don't think they sold any fish. But whenever an Indian went by with fish—of course, I didn't know all the time whether it was Columbia Indians or what it was—but when they went down there to fish they always went to The Dalles with them. They never came back with any fish.

Q. Now, did you ever, during those years that you lived there or was there, hear any Indians talking, of those north side Indians talking of going to The Dalles to fish, or going over on the Oregon side to fish?

A. Never did.

Q. When they talked about going for fish, or to get fish, where did they talk of going?

A. They talked of going to Tumwater, that is on the north bank.

Q. What do you say as to the customs of the Indians along there, as to going across the river to fish, back and forth—the Washington Indians fishing on the Oregon side, for instance?

A. I don't think that the Washington Indians ever fished on the Oregon side.

Q. Did you ever hear of their fishing on the Oregon side?

A. Never did.

Q. Now, when these Yakima Indians would go down there to Tumwater for fish, do you know how they got them, how they got their fish?

898 A. Well, I know how they got them of late years.

Q. Well, in the old days?

A. Oh, in the old days I think they caught them themselves mostly. Of course, they bought some of them, and some of them they probably caught.

Q. Now, how has it been of later years?

A. Why, of later years I think they nearly all buy their fish. I know George Me-nin-ocht out there, he has camped with me. He camped with me a number of years after I came back this last time, and he never has caught no fish. George Me-nin-ocht, he would come there and he would say he would want to camp. Well, George—we used to have some business with George, used to sell him a race horse once in a while, and he thought he belonged to

the family. Well, he was a pretty good friend of ours. And he would come there; and George, he would drive in; I would let him camp there. That is after I came back, you know, the next time, the last years. He would drive in there. First thing I would know, I would go down there, there would be half a dozen teams. I would say, Who was this? and it was George Me-nin-ocht's tillicums; and then all the balance of the Indians would be George's tillicums.

Q. Now, Mr. Gilmore, I wish you would just answer the questions, as much as you can, so as not to take up any more time than is necessary.

A. All right, sir.

Q. Now, what do you say about the custom and habit of the Indians to fish down there, as to selling their fish ever since you have known anything about them?

A. Well, I don't understand the question exactly.

Q. Well, what I want to find out is whether they sold their fish or not.

Mr. Rankin: He has testified once, your Honor, that they
899 have sold them in late years and didn't in earlier years.

Mr. Bennett: No, your Honor; he testified that the Yakimas used to buy them and fish for them in early years, and that of late years they almost always buy them.

Mr. Rankin: He didn't testify they bought them in early years, your Honor.

Mr. Bennett: The record will show about that, your Honor.

Court: Answer this question.

A. The Indians sold their fish quite a bit, the Yakima Indians, or the Indians that come by there. I suppose they was Columbias. But anyway, they would take them down to The Dalles in wagon-loads.

Q. Well, what do you say as to whether or not that was so in the early days?

A. To a certain extent, yes. I have seen them in early days taking down fish there. They used to bring us fish.

Q. Now, what was their habit in relation to the places where they fished?

A. Well, each Indian, or each bunch of Indians—that is, that was called tillicums, you know; that is, that was of the same family—they had a certain place to fish. And then another family would have another certain place to fish. I have went down there and got their pole to fish myself, but I never caught any fish. It looked too dangerous for me.

Q. How did you get a place to fish?

A. I would have to buy it.

Q. What say?

A. The Yakima Indians didn't have any fishing tackle when they came down there. Very seldom had they any fishing tackle at all. They would always get a dip net of some of the Indians. Give
900 them two-bits, and they would give them the right to fish and the net to fish with.

Q. Mr. Gilmore, do you know as much about the fishing place at Celilo as you do over at Wish-ham?

A. Do I know as much?

Q. Yes.

A. No, sir; I do not.

Q. Now, Mr. Gilmore, looking at this map and assuming that this is Celilo up here, and that this is Ten Mile Rapids, and that this place here is Five Mile Rapids, and this is the Big Eddy, and this the point running out from the Oregon side into Three Mile Rapids, and The Dalles down here.

A. Yes.

Q. Now, whereabouts would your home be on the map, about?

A. Well, my home would be, according to the lay of the land—

Q. That is Big Eddy there.

A. We would be about two miles from here in this direction. See, the river comes right around here. We would be,—of course, I don't know what the distance is, I would have to guess at that—it would be two miles from the Big Eddy.

Q. I will ask you to take this white pencil and mark on the map a circle about where your house would be.

A. Well, now, the scale of miles here—our place is pretty near—

Q. I will tell you that this map is made on a scale of—

Mr. Rankin: One to six thousand.

Mr. Bennett: Yes; that is about one foot to six thousand. That is about 500 feet to the inch. That would be a little over ten inches to a mile.

A. Well, our place would be somewheres about here, I should judge.

Q. Mark a circle there. (Witness does so.) Now you may mark "G" in there, the first letter of your name, inside the circle there, if you will. (Witness does so.) Now, whereabouts on the map would be Tumwater, where you say the Indians fished?

A. Right in here. Right along there.

Court: It would be right opposite Wish-ham.

Q. You may mark the places where they fished with a letter "H" if you will.

A. (Witness does so.) They even fished lower down a little in the early days, all the way along there, wherever they could get a location. The bluff was pretty high down here; when the water was up pretty well they could not fish. The bluffs was too high lower down. The bluffs near the head of this rapids was lower.

Q. How many places were there to fish there—one or more than one?

A. Oh, yes, there was several. I don't know just how many. I have seen Indians fishing at different places along there; and they was all fishing along here.

Q. Now, I will call your attention again to this point that is in

dispute here, marked "C". Now, have you ever been where you could see from across the river to that point?

A. Yes, sir; I have been there a number of times.

Q. Now, in the times that you have been there since 1871 up to 1914, how often would you say you were there on the hills on the other side there, where you could look across?

A. Oh, probably a couple of hundred times. I would say that easy enough, because that would only have to be four or five times a year; and I probably—lots of times I would be there two and three times a week. You see, there is some lakes right up—

902 Q. What called you there? How would you come to be there?

A. Well, the first few years and the last few years I was there, we was pasturing stock more or less. We didn't have nothing some places, there was just a bluff; and in other places there was a little pole struck up; and the stock used to get out of our pasture and get down into Rollins—it was Rollins in the early days. When I was first there it was Rollins. Our pasture fences was such that our stock used to get backwards and forth. I used to be down there. There is some lakes right on the hill right opposite this point here. There is a high bluff and there is some lakes on that bluff. It was all green. When the stock used to get away, we used to go there, figure on finding them there.

Q. How far would you be from this point in dispute?

A. I should judge it would be three-quarters of a mile.

Q. What kind of a country is that across the river there where you would go?

A. Well, it is a bluff. It is a high bluff up on the hill, and there is little lakes in there; and around them little lakes is always green grass. And when the stock would get away, they would always go there to those places where the green feed was.

Q. Would there be anything else take you over there?

A. Oh, I used to go over there shooting wood-chucks sometimes, shooting ducks, first, one thing and another.

Q. How would it be when you were over there as to whether there was anything between you and this point in question?

A. Oh, nothing at all; it was perfectly open, and there is no brush or anything on the point. If anybody was on the point you could see them.

Q. Now, did you ever see any Indians fishing over there?

903 A. Never did.

Q. If there had been Indians fishing over there in any considerable number, and especially on the point or on this side of the point, would you have seen them?

A. Yes, sir; I should think I should. Undoubtedly I would have seen them.

Q. Now, did you ever hear of that being an accustomed or any Indian fishing place?

A. Never did.

Cross-examination.

Questions by Mr. Rankin:

— Now, all down along here, that is to the north and Washington side of the word "Rapids", a portion of Three Mile Rapids, that is all high bluffs along there, isn't it, Mr. Gilmore?

A. Along here, facing the river?

Q. Yes.

A. No.

Q. Isn't that a high bluff there? Isn't that a point of rocks?

A. No. It is kind of a part of the river, you know, when the water is up. The high bluffs don't get, you know, till you get up here.

Q. You have got to get clear back of these sand dunes before you strike high bluffs. Is that it?

A. No. These bluffs are right opposite here, you see; up on that.

Mr. Bennett: May I ask one question?

Mr. Rankin: Yes.

(By Mr. Bennett:)

Q. Have you been at any time game warden over there in that country?

A. Yes, sir.

904 (By Mr. Bennett:)

Q. Was that country in your jurisdiction on the Washington side?

A. Yes, sir.

Q. Now, here at the north side of the word "Rapids", this little triangle, "4-7-R," isn't that a big point of rock there?

A. Why, I think there is quite a rock there, yes.

Q. You know where Jake Andrews used to fish with his scow wheel?

A. Yes.

Q. Isn't that along there a rocky cliff?

A. Yes, that is a rocky cliff. It is all rocky cliff. You see there is a little kind of island in here, you know, where he used to have his house.

Q. It is not all rocky cliff clear down in here, is it?

A. It breaks off here, you see; and then this high bluff is up here.

Q. There is a high bluff up here?

A. Yes.

Q. How high would you say this bluff is above the river?

A. Oh, 200 feet.

Q. Above the river? This point of rock here is pretty near 200 feet above the river, isn't it?

A. Oh, no.

Q. Where Jake Andrews—how high would you say that was above the river?

A. Probably at low water 50 or 75 feet.

Q. How about this cliff along here? Isn't that a high precipitous bank?

A. No, sir; it is a precipitous bank, but not high.

Q. Not high?

A. No.

905 Q. Whereabouts was this grassy place that you speak of?

A. On top of this bluff here—clear on top of the bluff.

Q. How near the edge of the bluff?

A. Oh, it would come within 50 yards.

Q. How far would it be back from this bay in here?—or little eddy as it has sometimes been called?

A. Probably it would be one hundred or one hundred and fifty yards, something like that. The railroad runs right around under this. They cut right through there, and the railroad runs right through under this. This bluff is right up above the railroad.

Q. How far back would that green place be?

A. From this point 3-7-R, oh, it would be quite a ways. I don't know just the distance, probably half a mile.

Q. When the Indians came down from the Yakima Reservation didn't they use to camp all along here on a kind of second bench through there? Haven't you seen them camping there?

A. Yes, I have seen them camping off along through there.

Q. Off along on the second bench?

A. Yes. In early days they haven't camped lower down. That is all fenced up. No, they camped higher up.

Q. Who had that fenced?

A. A man named McNary.

Q. You knew the McNarys up there, didn't you?

A. Yes, sir.

Q. Didn't they use to fish down there in Big Eddy?

A. No, I don't think they did. I never saw them fishing there. You see, that is still water there.

Q. I don't mean right in Big Eddy, but I mean either side of Big Eddy.

906 A. Yes; I think in early days they fished on either side of Big Eddy.

Q. Didn't they ever fish down in here?

A. I never saw them fish down in there.

Q. Did you ever see any Indian villages along below this point, below Big Eddy, which is sometimes an island?

A. No, sir.

Q. Never saw them fish along there?

A. No.

Q. You don't know of any Indian villages in there?

A. No, there wasn't any Indian villages in there since I have been there. It was deeded land. I don't know that it was deeded land. It was supposed to be deeded land.

Q. These Indians you saw along on the bench here, where would they come from?

A. Up a little higher here was an Indian village.

Q. Do you know Wish-ham?

A. That is what they call Wish-ham now. We used to call it Colwash.

Q. Is that where they came from over to camp along here?

A. No. These Indians that camped along here, you know—these Indians live, got Indian land along here now, up in here. All this is Indian land now.

Q. Yes, I know. But that is not my question. My question is, where did these Indians come from that camped along on this bench you have described.

A. Well, they lived right there.

Q. Lived there the year around?

A. Yes, sir.

Q. Always lived there?

A. Yes.

Q. You never saw any more Indians camped there than live there now?

907 A. Well, I might have saw more Indians camped. I didn't pay any attention to that. I used to go to their camp frequently, was in their camp. I don't know whether there was any fresh Indians there, other than what lived there, or not.

Q. You don't know?

A. I don't know as to that. And them Indians that come in from Yakima, I think when they camped, they camped at Colwash, that is higher up.

Q. You think they camped there?

A. Yes.

Q. They might have camped other places and you not known of it. Is that a fact?

A. Yes, certainly.

Q. How large a place was that, that you and your father had there?

A. 560 acres.

Q. That was devoted to dairy farming?

A. Yes.

Q. How long were you engaged in that business, Mr. Gilmore?

A. Well, the first time I was there, I was there about five years. Then I went into the John Day country, and I was there till 1900.

Q. When was it you first speak of being there on the farm?

A. 1871.

Q. You stayed there, I believe?

A. About 5 years.

Q. About 5 years, 1876?

A. Yes.

Q. When did you go into the John Day country?

A. Well, I started in there along about 1874, but I never went there for two years afterwards.

Q. You went there to stay two years afterwards, did you?

A. Yes, sir.

908 Q. When did you leave the John Day country?

A. About 1898.

Q. Came back here?

A. Well, I drifted back here a couple of years afterwards.

Q. When does your knowledge of this river again take up after you came back from the John Day country?

A. When I came back in 1900, then I used to be there frequently along the river.

Q. What were you there for then, Mr. Gilmore?

A. Well, I was—various businesses. I was furnishing milk to the railroad there.

Q. That is the North Bank?

A. Yes, the North Bank.

Q. Whereabouts did you furnish the milk?

A. Well, they had about five camps there.

Q. Kept you pretty busy furnishing milk to the railroad company, didn't it, with five camps to supply?

A. Yes, sir. I done it by proxy quite a bit, quite a bit.

Q. Where were you when you were furnishing the milk?

A. Well, I delivered the milk part of the time; part of the time somebody else did it.

Q. How much of a dairy did you have? What size?

A. I had about 45 cows.

Q. Your business was chiefly dairy and farm business then, was it?

A. Yes, sir.

Q. You never fished any, as I understand you?

A. No, sir; I never fished. That is, I fished, but I never caught any fish.

Q. You don't claim to be a fisherman?

A. No.

Q. Now, this road you speak of as coming down the Yakima—that is known as the Goldendale road, isn't it?

A. That is The Dalles and Goldendale road.

Q. And sometimes known as the Yakima road to the Yakima Reservation.

A. Well, in early days, you know, when I first went there, why, that was the road. They used to go by the Blockhouse and go over, right over by the Yakima Reservation. And afterwards they got a road up the canyon, up the Klickitat, and cut this Yakima proposition out.

Q. Did that Klickitat road go anywhere near your house?

A. That Yakima and Klickitat road?

Q. The second road you speak of.

A. Yes, the second road is just the same as the first, only when they got over into the Klickitat Valley they branched out. They go by Goldendale now, when they used to come by what is called the Blockhouse.

Q. Haven't you, in those four or five years that you owned the little place on the north side, your own place on the north side of the river, haven't you seen a good many Indians coming down that road on the way to The Dalles?

A. Seen a good many Indians coming down to The Dalles, yes.

Q. Over that road. You never saw any of those Indians taking down fish, did you?

A. Taking down fish to The Dalles?

Q. Yes.

A. Not when they come in from Yakima.

Q. No. You have also seen a good many Indians going back up that road to their reservation, haven't you?

A. Yes.

Q. In fact, that was one of the main traveled roads. Would you say that there were many Indians or just a few Indians came
910 down that road.

A. Well, there was, I would say there was—oh, there wasn't no big lot of them. In the fishing season usually there would be, oh, I wouldn't know, I wouldn't say probably more than a dozen or 20 wagons, after the Government got to furnishing them wagons. They used to come, when I first went there in the first place they mostly come horseback; they would have pack-horses.

Q. They used to put their horses in there, your field, you say?

A. Yes, my father used to; when I was first there I pastured horses.

Q. Was that one of the businesses of the firm?

A. Yes.

Q. When they had passed on through to The Dalles, you have seen them go on down and cross the river down there at The Dalles, have you?

A. Well, I never—when they come for fish they never used to go across the river there.

Q. I am not speaking of when they came for fish. I am asking you if they came on down and along on down to The Dalles and crossed the river there?

A. Oh, yes.

Q. You spoke about the custom and habit of the Indians of fishing at one place, and after they had fished there one family would hold that place. After that family got supplied, do you know what the custom of the Indians was there?

A. What is that?

Q. After the family that claimed that place was supplied, do you know what the custom of the Indians was then with respect to that place?

911 A. I think the family that owned that place—I think they did—after they got their supply I think they would sell their fish.

Q. They would still keep on fishing?

A. They would still keep on fishing.

Q. And sell their fish?

A. Sell their fish.

Q. Do you know that was the custom?

A. Yes, sir. I know that is the custom.

Q. You have seen that, have you?

A. Yes, I have seen that.

Q. Where have you seen it?

A. I have seen it—been at The Dalles when they would come in with their fish; been there on the boat. You see, I used to cross the river quite a bit.

Q. That would not relate to the particular place? They did not fish at The Dalles, did they?

A. Oh, no.

Q. Where did you see that particular custom?

A. Where would they fish?

Q. I am speaking of the custom of these Indians after they had fished at certain places to sell their fish.

A. Why, it is the custom to sell their fish.

Q. You mean to say that one family owning a particular fishing place continued to fish there to the exclusion of all others?

A. Yes, I would say that.

Q. And then after they had enough for their own use, they would take their fish somewhere else and sell it?

A. Take their fish somewhere else and sell it.

Q. You say that is the custom of the Indians?

A. That is the custom of the Indians.

912 Q. On what do you base your knowledge of the Indians, Mr. Gilmore?

A. How much do I base my knowledge?

Q. On what do you base your knowledge?

A. Why, observation.

Q. During the time that you were interested in running the dairy farm?

A. Well, you see, I was running the dairy farm after I came back; that is, what I call a dairy farm; of course, we was milking cows when I was there first; but we was not milking extensively like we was later on.

Q. Well, I say, it is during those times you base your knowledge of Indian customs?

A. On observation, yes.

Q. Now, did you ever see any Indians on the south bank of the river along here?

A. Did I ever see any?

Q. Yes.

A. Yes, I have seen Indians on this side.

Q. Where did they fish?

A. They wasn't fishing.

Q. They never fished?

A. No.

Q. You never saw any Indians on the south side fishing?

A. No, sir. Yes, I have, too. I have seen them higher up. I have seen them right across—

Q. What do you mean by higher up?

A. Across the river from the Five Mile Rapids. You see, up here on this side of the river, along here on the south bank.

Q. Isn't that a precipitous cliff, this place where the river shoots through is a very narrow place, isn't it?

A. Yes.

913 Q. Isn't that a precipitous cliff along there most of the way?

A. They would get down to the river. Some of them would get something to stand on. They would swing a board down there and get down on that board.

Q. Right on the cliffs?

A. Right on the cliffs.

Q. How would they fish there?

A. Fish with a dip net.

Q. Pull them out with a dip net?

A. Yes, pull them out with a dip net.

Q. That is a very precipitous cliff too, along that Five Mile, isn't it?

A. Part of it is. There is broken places in all of it.

Q. That they would get down?

A. They would get down in those places.

Q. Is that the only place you ever saw the Oregon Indians fish?

A. No. I have seen them fish higher up, seen them fish opposite there at Celilo.

Q. What would be the occasion of your seeing them fish up there?

A. Well, I am always looking when I am traveling around. I have been up there on the train time and again; and I have been up other ways; been up there horseback.

Q. How do you know they were always Oregon Indians?

A. I didn't know anything about it.

Q. Didn't know what kind of Indians they were?

A. I didn't know what they was.

Q. They might have been from the north side or the south side?

A. Yes, they might have been from the north bank or from some other place. But I didn't see any that I knew. I didn't see any of the North Bank Indians I knew.

914 Q. Did you know an old Indian up there by the name of Wasco Charley?

A. No.

Q. Never knew him?

A. I knew Oscar Charlev. but I never knew Wasco Charley.

Q. This is an Indian, Wasco Charley.

A. I know. But I say I know Oscar Charley.

Q. You don't know Wasco Charley?

A. I don't know Wasco Charley.

Q. I believe you marked the place on the other map where your house was. As I remember, it is up somewhere up through here?

A. Yes. Our house, as near as I can figure it out, it is about two miles from this point right here.

Q. There is a beach, isn't there, on that point marked 4-2-R, square,—there is a beach right in there?

A. You can walk right down to the beach here. There is no bluff or anything. There is a big bluff comes in there.

Q. You say there is a bluff right here?

A. Yes,—a big one, high.

Q. How do they mark those meander lines running back there, if there is a bluff there, on the map?

A. I don't know. I am sure of that.

Q. You are sure there is a bluff there?

A. Yes.

Q. The testimony has been there is a beach there. Would you say that is not accurate?

A. The beach is lower down.

Q. Whereabouts?

A. I figure the beach is here.

915 Q. Right in the center of this grassy place?

A. Yes.

Q. You lived just two miles back?

A. Yes.

Q. You ought to know where those beaches are.

A. I have been there hundreds of times. We used to get drift-wood there.

Q. You got drift-wood there?

A. When the river was up high it would shoot down here.

Q. Didn't the Indians go down to this big eddy to get wood?

A. They used to get wood there when I first went there.

Q. Now, which way were you more often hunting for cattle and hunting for ducks?

A. Well, you see, one fall I pastured—I brought down a bunch of cattle from the John Day country, and I pastured them in this pasture here for two months.

Q. Where were your pastures?

A. Well, this pasture at that time was the McNary pasture, and right along this side there is a dividing line came right in like this. On this side then was Collins, it belonged to, yes—belonged to Roland, I think, before.

Q. Your farm faced more on the Big Eddy than it did down on Three Mile?

A. Well, it was very little difference from my place. Of course, the map don't show it.

Q. What do you mean by that?

A. It was just as near from our place to the Big Eddy or as near down here.

916 Q. That is, in distance it was?

A. Yes, in distance.

Q. But where did you generally go?

A. It was owing to what I was going to.

Q. Generally, I am speaking—where did you generally go?

A. When I went to the river?

Q. No. When you were around there from Three Mile Rapids to Big Eddy, where was your territory that you generally went into, what part of the country?

A. The territory that I generally went into would be—I would go over—I would get over anywheres on the bluff and look around.

Q. What for?

A. Well, it is owing to what I was after. Sometimes I would be after stock and sometimes I would not be after anything particular.

Q. Don't you understand my question, Mr. Gilmore? I said what territory did you generally go into?

A. You mean what territory I frequented?

Q. Yes, frequented, if that is what you wanted?

A. I can't say that I frequented any.

Q. When these Indians returned from The Dalles after they had gone down there, would they pass by your house?

A. Yes, sir.

Q. Would they have any fish with them?

A. When they would come back?

Q. Yes.

A. Never saw them have any.

Q. You never saw them?

A. No. They used to camp there in the lane frequently.

Q. Will you mark on our map, please, just where your house was?

197 A. Well, as near as I can, it was somewheres along here. It might be a little further that way; but I think it is somewheres along in here.

Q. When they passed by your place, you never saw them have any fish?

A. No.

Q. Who owned that deeded land, Mr. Gilmore, in 71-2-4 you spoke about?

A. Which deeded land.

Q. Up along Five Mile.

A. This land in here?

Q. Yes.

A. McNary.

Q. You could not see this point from your house, could you?

A. Where?

Q. Here, "C".

A. No.

Redirect examination.

Q. Mr. Gilmore, when these Indians went by your place to The Dalles, did they stop at your place?

A. Well, they used to camp in the lane there sometimes.

Q. Well, now, would they talk to you about where they were going or what they were going for?

A. Why, yes, they would.

Q. What would they say they were going for?

A. Oh, they wanted iscum-tilli-sactus. That means they were going over to buy something—to trade.

Q. When they came back, what would they have?

A. They would have quite a bit of truck in the wagon, that is, the women would, and the men generally would have plenty inside of them.

Q. That is, you mean by that, they would be intoxicated?

A. Yes. They used to get all the whiskey they wanted
918 when they went to The Dalles.

Q. Had you any means of knowing whether or not that
was one of the purposes they went over there for?

Objected to as immaterial.

Q. Did you talk to them about that?

Mr. Rankin: Objected to as immaterial. They may have gone
down in the early days to get liquor. I suppose maybe they did, but
that is nothing to the Indians' discredit at all.

Mr. Bennett: I didn't say it was.

Court: I think the point in the case is whether they brought fish
back when they went home; and he said they did not; and that ought
to end that.

Mr. Bennett: We don't deny that the Indians went across there a
great many times, your Honor; don't make any question about that;
but we want to show that they went there for another purpose besides
to get fish.

Q. You said something about having been in the habit of going
across the ferry yourself. How often would you go there?

A. Usually twice or three times a week.

Q. What do you say as to the Indians crossing with you on the
ferry?

A. Why, I used to talk with them all the time, many times when
they were going over they would always be empty. And they might
have a little something in their wagon, but they would go over there
to trade.

Q. When they were coming back and you saw them on the ferry,
did they have any fish with them?

A. No, sir. They never had no fish.

Q. Now, counsel has cross-examined you as though you
919 only had a knowledge of that country during the years you
were actually living there.

A. Yes, that is all.

Q. What is the fact as to whether you have any knowledge of the
country while you were in business up at John Day? What, if any,
knowledge of the country did you have during those years when you
weren't living there?

A. The only knowledge I have, my father was there, you know.
I used to come down and visit the folks. I used to usually stay four
or five days or a week when I would be there. I would always go out
and look around the same as anybody, you know, when it would be
kind of quiet. I always had a horse, and I would just ride around
to see how things looked.

Q. Did you say anything about having horses pastured there, as I
understand you?

A. My father had horses pastured there.

Q. You, yourself, while you were up at the John Day country?

A. Oh, I used to bring my team down usually, or sometimes with the horses.

Q. What would you do with them while you were at your father's?

A. Why, I would put them in the pasture.

Recross-examination.

Q. What was your business at John Day? What were you doing up there?

A. I was in the stock business.

Q. When you were, how often would you visit your folks when you were in the stock business up there?

A. Oh, I was dealing in stock at that time. I used to visit them, oh, several times a year. I couldn't say just how many, but half a dozen anyway.

920 Q. When you were crossing the ferry down there, did you ever see these Indians with fishing apparatus or nets?

A. Did I ever see any?

Q. Yes.

A. No, I never did.

Q. Who ran the ferry?

A. Why, Peter Nelson and Charley Bruell.

Q. Who?

A. I say Peter Nelson and Charley Bruell.

Q. Did you ever see Jensen run the ferry there?

A. Yes, sir, but that was later.

Q. When did Jensen start to run the ferry?

A. Several years after I came there. I don't remember just how many.

Q. You never saw any fishing apparatus going back and forth crossing the ferry, then, belonging to the Indians?

A. No, never did. The ferrying was all done when I went there, nearly all the ferrying was done with small boats.

Q. Was that where the present ferry is, or up above there?

A. Just where the present ferry is now, virtually right there. There was different roads come in.

Excused.

921 FRANK SEUFERT, JR., a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

— You are a son of Frank Seufert, Sr.?

A. Yes, sir.

Q. And have some interest in the fishing business and cannery up there?

A. Yes, sir.

Q. How long have you been in and about the cannery?

A. Oh, I have worked there when I was about 12 or 14 years old during the summer time, possibly younger.

Q. Now, Mr. Seufert, who has attended to the buying of the fish since you have been there, the fish that you bought for the cannery?

A. Well, I have myself, practically all the time.

Q. Where do you have your headquarters during the fishing season when you are buying fish?

A. Well, when we are buying fish that we don't catch ourselves, we buy at Celilo—Tumwater, we call it. Our station is just about half a mile below Celilo on the Oregon side.

Q. Now, when some of these witnesses have designated Five Mile Rapids as Tumwater, is that what you mean when you say Tumwater?

A. No; we have a station we call Tumwater which is right below Celilo. We practically would call that Upper Tumwater, I suppose.

Q. There is another narrows up there, is there?

A. Right at the fall?

922 Q. Yes, right at the fall. Do you know what Tumwater means?

A. The Indians say, there is lots of water, or swift water, something like that. I don't know.

Q. Strong water?

A. Strong water.

Q. Now, during the years since you have been there, do you know where the usual and accustomed fishing places of the north bank Indians were?

A. Yes, sir.

Q. Where were they?

A. Why, on the Five Mile Rapids and Celilo. It is called Wish-ham, or not Wish-ham, but Skein.

Q. What is their fishing place at the Five Mile Rapids called?

A. In my later days I have called it Five Mile, but they call it Speedus at the present time.

Q. They call it what?

A. Speedus. And also Wish-ham, I guess, is the older name for it. They don't use that any more.

Q. Oh, you mean Speedus is the name of the railroad station there?

A. That is what is commonly called now.

Q. But do you know where Wish-ham village is?

A. Yes, sir.

Q. Where is the fishing place down there, with reference to that?

A. Why, right out in front of it. That is, it would be south, I should judge.

Q. Now, Mr. Seufert, what do you say as to the custom of the Washington Indians as to coming over on the Oregon side to fish?

A. Why, they don't come over.

Q. Do you know the Indians up there?

923 A. Why, the ones that do the fishing, yes, most all of them; know them by sight.

Q. How do you get acquainted with them by sight?

A. Oh, I meet them, talk with them, have dealings with them.

Q. Well, does that have anything to do with your buying of fish?

A. Why, that is practically the only way I meet them, is in buying the fish; or else in the winter time when they are around trying to borrow something. I meet them then quite often.

Q. In what part of the season do you buy fish from them?

A. Why, we get from the Wish-ham Indians, we get fish early in the spring, Chinook salmon; and later in the fall, why, we get from Celilo. We get also fish in the spring at Celilo if the stage of the water is right; and then in September we get practically all our fish at Celilo. We get a few from Wish-ham, but very few.

Q. How extensively do you buy fish from the Indians at Wish-ham and Celilo?

A. Oh, we take practically all they have to offer.

Objected to as incompetent, irrelevant and immaterial. The extent to which they purchase fish has nothing to do with fishing rights involved in this case.

Mr. Bennett: It shows his familiarity and acquaintance with the Indians, the extent of his dealings with them, etc.

Court: I will hear the answer.

A. What was the question?

Q. To what extent do you buy fish from the Indians?

A. Why, we buy all they have to offer.

Q. Well, is that much or little?

A. Why, sometimes it is quite a lot. Possibly some days we take—oh, ten ton from them in a day. We did last fall at Celilo.

924 Q. Now, do you know whether your company owns the fishing ground at Celilo and at Wish-ham?

Objected to as going outside of the issues of the case altogether. They may own it or they may not. We don't care. It makes no difference to the issues of the case.

Court: It might throw some light upon how extensively the Indians were fishing there, and how far they have been permitted to fish. I suppose that is the purpose of it.

Mr. Bennett: That is the purpose, your Honor.

Mr. Rankin: The Court will allow us an exception, please.

Court: Very well.

A. We own all the land where they fish on.

Q. Now, then, do you ever interfere with their fishing at these accustomed places in any way?

A. No, sir.

Q. Do you allow white men to go in there and interfere with them in any way?

A. No, sir. We won't allow no white men to go in at all.

Q. Then they have a monopoly of the fishing at those places?

A. Yes, sir.

Court: How do they fish?

A. Why, dip net, hooks, and spears.

Court: Do they use any wheels?

A. Why, no. Last year they have been inventing a little small wheel, but you cannot class it a wheel.

Q. Now, these Indians that you buy fish from, do they bring their fish from certain place or from different places?

Mr. Rankin: It is understood, your Honor, that our objection goes to all this testimony and an exception allowed.

925 Court: Very well. I am not going to hear very much of this, but I want to see how the development comes.

Mr. Bennett: This, it seems to me, your Honor, is very important.

Court: Well, it might be admitted that Mr. Seufert buys all the fish the Indians have to sell up there. I don't see how that is going to affect the question in point.

Mr. Bennett: The idea we are proving now, your Honor, is whether they fish at one point or many. I am asking him whether these Indians they buy fish from always come from the same place—the same Indians from the same place.

A. Why, they always come from the same place.

Q. Now, do you know what the custom of the Indians up there is as to owning places to fish, or claiming to own them?

A. Why, my experience is with them, all the old fellows have fishing places, and of late years they have got so they don't fish themselves but they take in partners. Young fellows do the work, and the old fellows come in on the settlement, as prior rights of fishing there, I guess, or they own it. They don't do practically any fishing themselves, but they stand on a rock and watch the young fellows work. For instance, an old fellow will take two young fellows in to do the fishing, and when it is divided it is divided in three parts, and he takes one-third for allowing the other fellows to fish there.

Q. Who does that dividing?

A. Why, they come in as company. Partners, they always class it—one or two partners; and then when I take them I settle right there with them in the office.

926 Q. What I am getting at is, whether you pay each one separately or some one Indian the whole bunch, where there are two or three Indians.

A. Sometimes one Indian will take it and divide it. Other times they are afraid he might go to town and get away with it, they will divide it right on the spot.

Q. You will divide the check?

A. Yes.

Q. Do you pay them by checks or in money?

A. Mostly by checks. Some of them demand money because they don't want to go to town.

Q. I don't care about that, only so far as it bears on the question of division. Are you acquainted with this point, Three Mile Point here?

A. Yes.

Q. How long have you been acquainted with that point?

A. Oh, in a general way, as far as I can remember back, possibly 20 years.

Q. How old a man are you?

A. I am almost 32.

Q. Now, has that ever been a place where the Indians from the north bank are accustomed to fish?

A. None to my knowledge, in my time.

Q. Have there ever been any Indians fished there?

A. Why, with the exception of old Wasco Charley, he is practically the only Indian that I ever saw or heard of fishing there.

Court: How about Williams?

A. Well, I am referring to the dip net fishing, if that is what your question is.

927 Q. Well, now, since the Court has asked—I thank your Honor for calling our attention to that—When did Sam Williams first come around there to fish in any way at all; not with regard to dip net particularly.

A. He first went there with a gill net about 1908 or '9. I wouldn't say exactly, somewhere along there.

Q. Where did he fish with a gill net with reference to that point?

A. He fished across this little piece right in here. You see there is an island in here. There is the end of the little lake in there. I should judge right about at that point.

Q. Prior to that time had he been fishing around there at all?

A. I never had seen him.

Q. Would you have seen him if he had been?

A. Why, sure I would have seen him, because when a man stands on a new place fishing there you would hear it just about as quick as when a man is married—general talk right off, a new place to fish.

Q. Had he ever dip netted on that island?

A. Why, I never have seen him, never have heard of him dipping there.

Q. Now, Frank, what do you say as to whether there is any time, during your memory, there has been any time when there were Indian boats left on either side of that river along there, or any kind of boats that Indians owned or used?

A. About the only boat I ever seen—I never seen over one at any time, and that would be in the Big Eddy on the Washington side.

Q. Well, I am not asking you about that now.

928 A. I never seen any down there in my life.

Q. Well, now, if there had been boats kept there all the time, month by month and year by year, during the fishing season, a boat on each side, and it had been carried back from the river during high water and left there somewheres on the bluff or the shore in that vicinity, what do you say as to whether you would have seen it or not?

A. Why, I could not help but see it.

Q. Was there ever anything of that kind?

A. No.

Q. Now, then, about the current of the river down here around this point from Covington Head down to the bottom of the rapids below Three Mile Point. I wish you would give to the Court your version of just how far and at what seasons of the year it is navigable.

A. Well, I should judge when the water gets down to The Dalles about 8 or 10 foot, why, it would be unsafe to go anywhere in there. Of course, you might go in there and get out, but you would not travel there very often. And that would be practically along in the latter part of September to along in February some time.

Q. When does the water get the lowest in the river along there?

A. Why, generally along in January about this time, along after the first of the year.

Q. How is it late in the fall?

A. Well, along in October, why, it gets pretty well down.

Q. Now, when does the water begin to raise there?

A. Well, it generally starts in along in February. Sometimes it will come up quite rapidly and then drop back a little bit,
929 but she never goes down to really zero again; just gradually keeps lifting all the time.

Recess until 2 P. M.

PORTLAND, OREGON, January 31, 1916—2 p. m.

FRANK SEUFERT, JR., resumes the stand.

Direct examination continued:

Q. Now, Frank, I would like to have you come down here and show the Court whereabouts it is that you buy the fish.

A. You mean where they come from?

Q. No. Where the place is where you are when you buy the fish.

Mr. Rankin: To which we object, your Honor. I suppose our objection runs to all this testimony that relates to other places than the Three Mile Rapids.

Mr. Bennett: Your Honor, they have gone into all these other places.

Court: He has asked him where they buy the fish. That is the head office of the company, I suppose?

Mr. Bennett: No; the head office of the company would be down at the cannery, your Honor.

Mr. Rankin: This is 11 miles distant—11 miles up the river.

Court: This is one of the sub-offices where you have an agent stationed for the purpose of buying fish?

Mr. Bennett: Yes, your Honor, an office there for the purpose of buying fish. I just wanted to show its relation to this fishery, so he would be in a position to show what they are doing.

930 Court: I will hear the testimony.

Mr. Rankin: Note an exception.

A. Right here at Tumwater, right under Celilo Falls.

Q. Will you mark that with a letter "T"? (Witness does so.)

Q. Now, is there anything interfering between that and the place where the Indians fish over there, to keep you from seeing what they are doing, where they are fishing?

A. Why, no; this is high over here, and you can see all over those falls.

Mr. Rankin: It is understood, your Honor, that our objection goes to all this testimony, and the objection will be overruled and we may have an exception.

Court: Yes. I suppose this is introduced for the purpose of showing the manner of fishing by the Indians.

Mr. Bennett: To show their methods of fishing and their fishing in one place.

A. Why, we get fish from this big island here, also in here, and a few down in here.

Court: Does Mr. Seufert own all that property in there—the land?

A. Yes, sir.

Q. Now, how many fishing places are there in there?

A. Oh, that would be hard to state. Out in here on that island alone I suppose there is fifteen or twenty places. That is, you would see that many Indians fishing at one time. And out in here, why, there must be 20 or 25 fishing there at one time.

Q. Where is the main channel of the river?

A. The main channel comes down through here.

Q. And all of these islands west and north of that channel are on the Washington side?

931 A. Yes, sir.

Court: The channel of the river, then, widens out above the rapids very much.

Mr. Bennett: Yes, your Honor. You explain that to the Court, if you will.

A. Why, that is Celilo Falls there.

Q. Just come down here and explain to the Court where Celilo Falls is.

A. Now, here is the main falls, called Horse Shoe Falls. This is all water in here, but the main channel goes over this falls and down this way. The water is very shallow over there, and here it just widens out, just the whole river.

Q. These channels between the islands on the Washington side of Celilo Falls, how is the water there?

A. The water is very swift and just a series of falls one after the other.

Q. How does it vary in different seasons of the year?

A. When the water gets high the fall disappears. It dams up from back there and it covers this.

Q. Where do the Indians fish there at low water?

A. They fish all over, from this side clear all the way around.

Q. After the water gets high, where do they fish?

A. They move down here. They are fishing there all the time, low and high water, at Five Mile.

Q. How high does the water get there before they attempt to fish at all?

A. Do you mean figuring the height of The Dalles?

Q. Yes.

A. Well, I should judge about 15 feet; between 15 and 20 feet at The Dalles covers it.

Q. So they could not fish there at all?

A. Could not fish there at all.

Court: They fish under those little falls that come down through there. How close to the falls?

A. Right up to them. There is a series of little channels all through there. The map don't show as many as there really is.

Q. You heard the testimony of the witness, an Indian who was Doctor somebody, who said his wife's name was—Do you know that Indian?

A. Yes, sir.

Q. Where was his fishing place?

A. It was on that big—point it out to you?

Q. Yes, you may point it out.

A. His place is on this big island, right about in there.

Court: Did he have two fishing places?

A. Why, he was practically the chief of that island, is what he is classed at the present time.

Court: I understood him he fished down here.

A. Well, all the fish we buy from him comes from this island down here.

Q. Now, he testified that your company told him that he had to sell you fish or go away from there. Was there ever anything of that kind occurred?

A. No, sir.

Q. He testified also that you wouldn't give him but one cent a pound for his fish, and that you would give other Indians five cents a pound. Now, what were your prices for fish there?

933 A. Why, the spring fish, the Chinook salmon, which is the best, is five cents a pound. He never fished and sold us any fish in the spring. He only came there in the fall, after the second grade, which is fall Chinooks and Steel-heads, Silver-sides—the standard price is one cent a pound. That was the only time that he ever brought fish in.

Q. Now, did you pay any more to anybody for that kind of fish?

A. No, sir.

Q. How did these fish compare in value with the Chinook salmon?

A. Why, they are all second grade fish. They are pale. The colors are pale. The oil is poor.

Q. Well, I think I can bring out more about that by some one else. Do you recognize this picture, Mr. Seufert?

A. Yes, sir.

Q. Do you know who took that picture (Exhibit E)?

A. Arthur Seufert.

Q. That is your brother?

A. Yes, sir.

Q. Is it a correct picture of the conditions that are shown on the picture?

A. Yes, sir.

Q. Now, can you locate the point in dispute on that picture as it was? Was that picture taken before or after the point was blasted off?

A. That was taken before.

Q. Now, can you locate the point in question on that picture as it was before?

A. Well, you see this bluff hides the point. The point runs out possibly that far. It don't show it at all. This bluff is much
934 higher than the point, you see, and it is right in line. The river goes over this way and down. You can see the water just slightly there.

Q. Where is the bluff that hides the point, on the Oregon side or the Washington side?

A. On the Washington side.

Q. Now, I wish you would take this black pencil and mark a round circle on that picture right over where the point would be if it was not hidden by the bluff, as near as you can—just a small round circle.

A. Well, right about in there. I am putting it on the bluff.

Q. Now, Mr. Seufert, where is the point where your crib or wall for your fish wheel in question is situated?

Court: You mean fish wheel at Three Mile Rapids?

Mr. Bennett: Yes, the one at Three Mile Rapids, the wall at the very particular point.

A. You cannot see it in this picture. It is right in, off about in there. It is not at the point; it is around the point.

Q. What say?

A. It is around the point, but the point don't show there.

Court: It is behind that rock?

A. Behind that rock.

Q. Would the point as it is blasted off now show in that picture?

A. Well, this hides an awful lot of the point, Judge. You cannot. But it is around the point, the way it is now, the lower downstream side.

Q. Well, you know how the point is, as it is now, do you?

A. Yes, sir.

935 Q. Now, I asked you to refer to Government's Exhibit 8, and ask you if this shows that point practically as it is blasted off now?

A. Yes, sir.

Court: Who made that survey?

A. Gus Moore was the engineer.

Q. That is the County Surveyor at The Dalles?

A. County Surveyor at The Dalles.

Q. Now, you may mark on that map with a figure 2 the point where the blasting terminated on the lower side.

A. That is where the blasting terminated on the lower side.

Q. I want to get the point on this lower side where the blasting terminated where the rock in place still remains undisturbed by the blast, the first point where the rock in place meets the blast.

A. This one right here is where it has not been disturbed.

Q. Well, is that the first point where it has not been disturbed?

A. Looking up, yes.

Q. It is blasted off clear to here?

A. You are going up stream. You say the lower side or the upper side now?

Q. I want the lower side, but I want the place where the blasting ends on that side, whether it is here, or here, or where it is.

A. Right here is where it ends.

Q. That is, it is blasted down to there, is it?

A. Yes.

Q. Mark that with a figure 2.

(Witness does so.)

936 Q. Now, how far is that from the point where your wall and wheel stands?

A. Oh, about 150 feet, I should judge.

Q. Have you measured that?

A. No, I am guessing at it.

Q. Well, now, mark with a figure 3 the place there on that point where your wheel stands—where your wall and wheel stands.

A. Well, I will bring it back here. (Marks with a "3.")

Court: Does the wheel stand on the blasted part of the rock?

A. Why, yes. It is just trimmed there. It is not shot off very much; just possibly a little trimming on it. But you would call it—it is the main land.

Q. Now, then, I want to refer again to this picture marked "Defendant's Exhibit E," and ask you what is the state of the water at low water below that point?

A. When this picture was taken?

Q. Yes, below that point that you have marked there with the circle.

Mr. Rankin: You mean on the picture?

Mr. Bennett: Yes.

Mr. Rankin: Well, the picture speaks for itself.

Mr. Bennett: I don't care for the picture, but I am asking him as to the state of the water at low water below that point.

A. When this picture was taken?

Q. No, no; at low water. At low water any time. What kind of water is there in there at low water?

A. Oh, what kind of water.

Q. Yes, is it still water, or rough water, or what kind of water?

937 A. In low water it is not still, it is not really rough; it is kind of boily water in there.

Q. Now, are you acquainted with places where fish can be caught with dip net up and down the river?

A. Yes, sir.

Q. What do you say as to that being a place where fish can be caught with a dip net?

A. I don't think it is.

Q. That is, on the lower side where your wheel is, and from there out?

A. I don't think it is. You might catch one, but you may work there for days before you do it. But it is not a place where a person would go to fish for a living.

Court: Why?

A. Why, the water is going out. When the water cuts across this way here, she hits in here, and here the boils are very large. She rushes around this point and she hits over here and she turns back. This water over here is higher than it is here. When it flops over it boils up here. If you put a net in there, she would go right out in the river with you. You would have to have the water coming straight. It is hard enough to hold a net down, let alone trying to hold it in a straight path.

Q. Now, did you hear the story of Mr. Lucky and Mr. McFarland on the stand as to having fished somewhere up the river there, they thought it was likely at this place?

A. Yes, I heard them.

Q. You heard the place they described?

A. Yes, sir.

Q. Is there any such place as that at this point?

938 A. No, sir.

Q. Where is there such a place?

A. Why, the place they described is up on Five Mile Rapids.

Q. Just show the Judge on the map.

A. Why, I should judge it is right in here. There is two channels in here.

Q. Just mark that with a cross.

A. It is either this one or that one; one of those channels in there.

Q. Now, is there a little fall at that place?

A. Yes, sir.

Q. Now, how close to the water do they have to be to operate a dip net?

A. Oh, about, well, from one foot to possibly four, not over five.

Cross-examination.

Questions by Mr. Rankin:

Mr. Seufert, how long have you lived out at the cannery?

A. When I first moved out there I was, oh, I should judge a year or two old.

Q. You moved right to the cannery?

A. Yes, sir.

Q. You lived there how long?

A. Oh, I lived there until—oh, I don't know just how long. I lived in town about ten or twelve years. Then I went back at the cannery again. Then I am living in town this last time about two years—about a year and a half.

Q. You have sat in the court room during the entire trial so far, have you not?

939 A. Yes, sir.

Q. You know the Indians who testified, some of them at least?

A. Some of them, not all of them.

Q. Do you know Lancaster Spencer?

A. Yes.

Q. He is quite prominent?

A. Yes, big fellow.

Q. And Charley Dick, do you know him?

A. I don't know him.

Q. Do you know George Me-nin-ocht?

A. Yes.

Q. And Frank Seelatsee?

A. No, I didn't know him.

Q. Well, you knew Peter Jackson quite well?

A. Yes, sir.

Q. And Charley Switzler?

A. Yes, sir.

Q. He was in the preliminary. And you knew Jake Andrews, did you?

A. Yes, sir.

Q. Aren't those all Yakima Indians?

A. Well, I could not tell what they was.

Q. Well, don't you know Oregon Indians from Yakima Indians?

A. Well, the fellows that are right around there I know, but some of those fellows I couldn't say what tribes they belong to any more than when they come from the other side of the river, we class them as Yakimas.

Q. Now, I want to ask you about this little map we have, (Exhibit 8). Do you recall, Mr. Seufert, the time that you and I went down in the launch to this point?

A. Yes, sir.

Q. Would you mind indicating to the Court there about where it was we landed in that bayou?

940 A. Why, we landed almost in the end of this slough, I should judge. Right here.

Q. We came off this point here, didn't we, came right down to about this middle cipher and landed in there?

A. No. The bluff is very steep along there, and there is only one place you can get up, and that is practically right on the end here.

Q. How high is that bluff along there you speak of?

A. Where you went up?

Q. Yes.

A. Oh, I should judge 20 feet; but it has some shelves so you can climb up.

Q. Didn't we get off about there and walk up from one shelf to another, get off on a little sand beach?

A. We got off—this sand beach is right here.

Q. We went clear to the end—we practically landed on that sand beach. After we got off there at the sand beach, do you remember I asked you where your line ran there?

A. I don't remember now whether you did or not.

Q. Who was the man that was with us—Hank Wickman?

A. Yes, sir.

Q. You sent him out to show the point on the rocks. He stood there on the point on the rocks.

A. Yes, sir.

Q. Where did he stand?

A. He stood on this point right there.

Q. Will you mark that with a "W"?

(Witness does so.)

941 Q. Now, whereabouts from there was the scow Peter Jackson was operating?

A. Well, I cannot locate exactly. Somewheres right in about there.

Q. Just put a mark out from there.

(Witness does so.)

Q. Was he in that eddy?

A. No, the eddy—there is no eddy where he is. The eddy is really away up in here.

Q. Was he right off that point?

A. He was below that point. That is, off—he was down stream from this point.

Mr. Bennett: Don't refer to "Point." It might be confusing.

Q. I mean point "W."

A. He was down stream from there.

Q. Was he that close to your line?

A. Well, he was right in there somewheres.

Q. Wasn't he more down here? I am just asking for information now.

A. No. This is practically down on the point already, but he is above the point.

Q. How far above the point that runs into the river there, or rather the point—

A. He is possibly 150 feet, maybe 175.

Q. He was about in here rather than up there, wasn't he? I am just asking for information.

A. I was judging by the straight line. He is along a straight piece, right in there. Right here.

942 Q. Was his scow located above or below where the blasting was done?

A. Above.

Q. Above where the blasting was done. Let me refresh your memory, if I may, Mr. Seufert. Is this point blasted down this far, or isn't it rather blasted right in there?

A. I think I am a little too low down on that.

Q. I think maybe we will agree on that.

A. It is a little higher than that. I could not tell exactly on the map, because it is hard to tell.

Q. It doesn't show where the blasting was on that map. Let me show you this map, which shows the blasting. Now, about where was Peter Jackson's scow?

A. Well, I am kind of confused where this line would run out here. It is somewheres along in here, about in here.

Q. Just look at this.

A. Well, I should judge about in here somewheres.

Q. Just mark that with a "W."

(Witness does so.)

Q. That is where your corner post runs to?

A. I was figuring about where Jackson was.

Q. No, I asked you where the corner post was, if I am not mistaken. I had that in mind.

A. It is a kind of hard proposition to guess. I should judge about in here. That is "W."

Q. You think that is the point?

Court: Now, put this "P" up here.

A. I will put "P" up here. I have a little longer distance there than I should have.

943 Q. When Wickman got off the launch did he cross the point there? Did he cross the point of land?

A. That is, walked across?

Q. Yes.

A. Yes, sir.

Q. Did he go right straight up the shore from where we landed?

A. He got out here and he went that direction.

Q. He didn't go right up the shore line as this would be, did he?

A. He walked back from the shore line. He had no occasion to walk right on the edge.

Q. I don't mean that, Mr. Seufert; but didn't he cross the point here rather than go right straight up the shore line to this line here known as North 20-8 2?

A. If I remember right, he was walking in the direction of this point, and when he got here he went over here and found where that monument was; but I couldn't tell whether he was walking on the edge. I paid no attention to it at the time.

Q. Do you remember where we landed?

A. Yes.

Q. Did he walk straight out north along that shore, or did he cross the point?

A. I don't remember just where he walked because I paid no particular attention.

Q. The reason that I am asking about this is because I think your

points are wrong, in accordance with your own map here. I may be mistaken.

A. Well, you see this here is very confusing because it is just a straight line around there. I was there when that was surveyed, and I can do better work on that map.

Q. Now, how far from Peter Jackson's scow was it down the river to where the blasting was?

944 A. Oh, I should judge 150—somewhere from 150 to 175 feet.

Q. You think this is about the right point here?

A. About in there.

Q. About that distance there?

A. I could tell better by feet than I could by pointing on the map.

Q. Supposing this is where the blasting ended, and as I understand it is on the down side from that point, now where is your wall located?

A. Well, let me see. The wall is right in here, I think, somewhere along there.

Q. How far from where the blasting was?

A. Where it lets off—where the bluff goes down to that level spot, it is about 150 or 175 feet.

Q. Below?

A. Down to that shelf.

Q. You spoke of navigation down there. They take boats through that rapids all the time, don't they?

A. At low stages of the water they do.

Q. And at fishing stages of the water, do they not?

A. Why, we don't take none through—I don't believe anybody does. They don't bring them back, if they go down.

Q. How about your fishing scows? You take them down there?

A. We take them down at very low water and leave them down there until the water is very low before we bring them back up.

Q. But the time we were down there, for example, there were fishing scows out there in the river, were there not?

A. If I remember right, Peter Jackson's scow was there.

Q. Wasn't there another scow out on the rocks closer to the Washington side?

945 A. On the opposite side?

Q. Yes.

A. Why, I think there was an old one there belonging to an Indian up on the side.

Q. I don't mean the Jake Andrews scow there in the bay. I mean wasn't there another one down there in the rocks?

Mr. Bennett: On this point?

Mr. Rankin: Just off the point.

A. It was on the point across the river.

Q. I don't mean the Jake Andrews point in the sand.

A. I don't remember now. I paid no particular attention.

Q. You take your scows—you move them up and down through there in the fishing season, do you not?

A. No, we move them in there early in the spring. As soon as the water starts to show any signs of raising we immediately get them on the other side of the river and take them down. If we have one running below the point there, we take that one down first thing.

Q. When do you bring them back?

A. Along in September.

Q. How do you get your fish from those wheels?

A. Why, we take them out below Three Mile Rapids and then haul them around with team.

Q. You can take them down—others take them down to The Dalles from Three Mile, don't they, in a boat?

A. I guess they could.

Q. Haven't you seen them do it?

A. Why, yes, I have seen boats go down. I could not say whether they had fish in them or not.

946 Q. Now, what Indians, Mr. Seufert, have you seen fish off this point in question, Point "C" I believe it is marked on your map here, and known on the engineer's map there as "Location 6"?

A. That is Three Mile Rapids.

Q. Yes, the head of Three Mile Rapids, what you heard in the testimony called Kum-sucks or Wah-sucks.

A. Yes.

Q. Now, name the Indians that you have seen fish there, and the manner of fishing.

A. Well, I have seen Wasco Charley dipping, but he is the only man I ever seen dip off there. I have seen Sam Williams run a scow wheel—that is practically—and Peter Jackson running the scow above the point. That is the only Indians I have seen fish there.

Q. Did you ever see Charley Switzler fish there?

A. Oh, yes; Charley Switzler and Peter Bruno fished there last year.

Q. Did you ever see Jake Andrews fish there?

A. I think Jake Andrews tried it there, but he never fished any.

Q. How long was he there?

A. Oh, I think he was bringing his scow up the river, and went right on by and left it.

Q. He didn't stop at all?

A. Oh, he might have stopped over night, but that is all.

Q. He didn't fish?

A. He didn't fish.

Q. When did you see Wasco Charley there?

A. Oh, I have seen him possibly—oh, two or three years ago.

Q. He was an old resident around that section, was he not?

A. Yes, sir.

947 Q. When do you first recall of seeing him?

A. Oh, when I was a little kid, I guess; possibly the first Indian I could remember.

Q. Where did you see him dip, Mr. Seufert?

A. Why, I used to always see him going by. He used to dip mostly up at Five Mile Rapids. He always went by the cannery.

Q. I mean off this point in particular.

A. If he dipped there?

Q. Did he dip there?

A. Oh, occasionally.

Q. All right. Where did he dip?

A. I can tell you better on this map here possibly.

Q. All right.

A. He dipped, I should judge, about 150 or 175 feet more or less above where they quit cutting off the point.

Q. Above—that is up the river?

A. Up the river, above.

Court: That would be where Jackson's wheel is.

A. Well, yes, there just a trifle above Jackson's wheel. I wouldn't judge over 25, maybe 50 feet—20 feet—something like that.

Q. Didn't he also dip between Jackson's wheel and the point where it was blasted off?

A. Well, he might have dipped right at the scow. It is only a little place in there that he dipped. I could not tell you exactly.

Q. Didn't you ever see him dip down here near where your wheel is?

A. I never saw him, never heard of him dipping down there.

Q. You don't know as to that. When did you last see him
948 dipping in here?

A. Oh, I haven't seen him dipping there for two or three years, I should judge.

Q. Did you ever pay any attention, Mr. Seufert, to whether or not Indians who fished off that point were Yakima Indians or from the south side of the river?

A. I never saw any fish off there besides Wasco Charley, and he was always called a Wasco Indian.

Q. But I mean now with fishing wheels.

A. Well, Sam Williams and Peter Bruno and Charley Switzler, why, class themselves as Wasco Indians. Sam Williams, I always understood he was a Siletz, or something like that.

Court: Siletz Indian?

A. Siletz.

Court: From the coast?

A. I don't know where he was—over there at Newport.

Mr. Bennett: He means Cowlitz, your Honor.

A. Yes, Cowlitz.

Court: Cowlitz?

A. Yes.

Q. You mentioned your ownership of these lands here. Do you really own those lands, those islands through there, you referred to, below Horseshoe Falls or Celilo?

A. There may be a few of those islands we don't own, but I think we own most of them.

Q. That is not the same ownership you assert to the point in question down here, is it?

A. No, we got deeds for all those up there, I imagine, except possibly a few small ones.

949 Q. And you haven't got deeds, I understand, for this point down here?

A. We have for the land right back of the point.

Q. But not for the point in question?

A. We have no deed for the point; but we figure we own that by owning the land up to the point.

Q. You made application to purchase that yourself, did you not?

A. Yes, sir.

Objected to as not proper cross-examination.

Redirect examination:

Q. Now, these islands here that counsel has asked you about on the Oregon side, do you own the land abutting back of them?

A. Yes, sir; own it all along.

Q. Now, then, in addition to that, have you bought the shore land title from the State to that?

A. Yes, sir.

Q. I will ask you if on this map, Defendant's Exhibit G, it is as it was before the point was blown off or not.

A. Yes, sir, that was before it was blown off.

Q. Now, then, I wish you would take this map and mark with a letter "H" with a red pencil, where you landed with Mr. Rankin the day that he speaks about.

A. Well, about in here (marks with red pencil).

Q. Now, then, what letter is that?

A. "H."

Q. Mark with a letter "I," make it pretty big and plain, the point where Jackson's wheel was. (Witness does so.)

Q. Now, you may mark with a letter "K" the point where Wasco Charley used to fish.

(Witness does so.)

950 Q. How far are those last two points apart?

A. Oh, not over 50 feet.

Q. Now, then, you may mark with a letter "M," as near as you can, the point where your wall is, where you fasten your wheel.

A. Right in there somewhere.

(Witness marks.)

Q. Now, how far do you say that is below where the blasting ended?

A. Why, between 150 and 175 feet, that is, where the rock is cut off.

Excused.

951 FRANK SEUFERT, Jr., recalled.

Examination by the Court:

Q. How far in the river does your wheel operate?

A. The wheel is ten feet wide. You can pull it in just as close to the bank as you possibly can without hitting it.

Q. You had it as close to the bank as you could, and the wheel was ten feet back?

A. Yes.

Q. You aim to get that in the channel where the fish run, don't you?

A. Well, those scows don't run in channels. We run right up against a straight bank. They are on scows. You are referring to a fish wheel or a scow wheel?

Q. Is this a scow wheel?

A. These on this point are scow wheels. They are on a boat.

Q. What I am getting at now, you say your wheel operates right close to the bank?

A. Yes.

Q. The wheel itself, say nothing of the scow?

A. Yes.

Q. That extends out ten feet into the channel?

A. Yes.

Q. You aim to get that wheel into the track where the fish run, don't you?

A. Yes, sir.

Q. What is to prevent a person fishing off the rocks at that place so as to get the dip nets into the track where the salmon run?

952 A. Well, the salmon don't seem to have any particular track. You can never tell where they are going. If you are not in the track you don't get any. You cannot dip right alongside of the wheel, because the wheel is right up against the bank just as close as we possibly can.

Q. Suppose the wheel was not there, wouldn't that be a good dipping place, supposing the wheel was not there?

A. No. No, it would not. As a rule our best scow places are where you could not catch fish with a dip net.

Q. You said in your testimony that when the water struck the upper part of that point, that it ran straight over to the other bank, and then came back to this side, so that when persons were dipping off the lower edge of that rock they would not be dipping in the current—formed a sort of eddy. Now, is your wheel in the eddy or in the current?

A. The wheel is so large it dips down 16 feet, as a rule; there may be an eddy on top, but the current is underneath.

Q. You say the current does come back underneath but not on top?

A. You cannot tell what is underneath. On top the water may be boiling, and you get down a little bit it will be rushing the other way.

Q. From the appearance there, your wheel is in a whirlpool?

A. Not necessarily a whirlpool. It is very rough water. There is small whirls. The rougher the water is, the better the wheel will catch.

Mr. Bennett: Is a wheel place also a good dip net place?

A. No, I don't think it is, what you would call a dipping place.

953 Q. You say the blades of the scow go down 16 feet?

A. Yes.

Q. How deep do they dip?

A. Why, dip within about 12 foot, 14, about 2 foot out of water; keep the axle about 2 feet above the water; the rest of the 16, which would leave 14, is in the water.

Q. In a dip net?

A. No, in the wheel.

Q. Well, with a dip net?

A. You don't run them only about 3 feet. The blades are about 3½ feet—you run them just under water.

Q. With a dip net?

A. Yes, with a dip net.

Q. You heard the witness, Mann, I think it was, testify that they had four lines besides the main line, from the upper end of the scow, they had four lines to hold the scow in to shore?

A. Yes, sir.

Q. Now, why is that necessary?

A. Well, that water underneath there is lifting up and going out, and it only takes one line to hold it from going down stream, but it takes these others to hold it in.

Q. Why couldn't you fish with a net in there?

A. Throw your net in there, you would throw it right out again.

Q. Do you dip with the current or against it?

A. You dip with the current.

Cross-examination:

Q. That is true in the places where the scows are located. Is that true of all the places up and down off that point?

A. Well, it is practically true all over. There is only one place, and that is above the point, where you could dip.

954 Q. Well, if the current follows the course that you suggest, wouldn't it make an eddy in there?

A. Why, no. The water acting under the water is lifting it at this particular point.

Q. That is where the scow wheel is?

A. Where the scow is.

Q. That is not true of all the points along there?

A. It is true from that point down, and above there the water is going right into the bank and rolling right away.

Court: Is that a choice place for the location of a fishing wheel?

A. On this point?

Court: Yes, where you have your wheel now.

A. Why, it is the best that is on the point. It is not a real choice place on the river.

Excused.

955 Mrs. JENNIE WELLINGHAM, a witness called on behalf of the defendant, being first duly sworn, testified as follows.

Direct examination.

Questions by Mr. Bennett:

— Mrs. Wellingham, where do you reside?

A. Portland.

Q. Did you ever live with the Gilmore family in the neighborhood of North Dalles?

A. Yes, sir.

Q. What years did you live there?

A. 1877 when I went there.

Q. 1877 up to what time?

A. Yes, when I went up there; till about 1887, I think.

Q. About 10 years?

A. Yes.

Q. Now, during that time you knew the witness who was just here on the stand—Mr. Robert Gilmore?

A. Yes, sir.

Q. This was at the same place where his people lived?

A. Yes, sir.

Q. Now, during the time that you lived there, what do you say as to the Indians stopping at that place?

A. What was that you said, Judge?

Q. What do you say as to the Indians stopping at that place, as to whether they stopped there, and if so, how frequently?

A. Oh, they was there mostly in the summer time.

Q. Now, did you talk jargon in those days?

A. Yes, sir.

956 Q. Now, where did those Indians stop and camp when they would come there?

A. Well, they generally stopped at Tumwater.

Q. I mean about your place, I am asking now.

A. Well, they didn't camp very close around there; generally about half a mile from the house, something like that.

Q. Now, do you know where they were in the habit of going from there when they went to fish?

A. Well, they said they were going to Tumwater—generally went that way.

Q. Going to Tumwater?

A. Yes.

Q. Do you know how Tumwater is now designated by the white people?

A. Well, no, not now I don't. It has been some time since I was there.

Q. Well, they said they were going to Tumwater?

A. Yes.

Q. Your place was right on the road?

A. Right on the road, yes.

Q. Did any Indians pass your place and stop there going to The Dalles?

A. Yes. Well, I don't know as they stopped there, but they was going that way.

Q. Going in that direction?

A. Yes, sir.

Q. Did you hear them talk about where they were going?

A. Well, not exactly, no.

Q. Did you see them come back?

A. Yes.

Q. Do you know what they went to The Dalles for, from what they said or anything?

957 A. Well, some of them went to trade; different things.

Q. Now, did you know any of the Indians who lived down at Wish-ham at that time?

A. No, I don't know where that was.

Q. Well, what do you say as to any Indians from that direction going by towards The Dalles—from down towards Wish-ham?

A. Is that place close to Tumwater?

Q. Yes, from Tumwater I mean. Yes.

A. Well, I couldn't say as to that.

Q. What I am asking you is whether you saw any Indians coming from down towards Tumwater going to The Dalles.

A. Yes.

Q. What would they have when they would go by, going towards The Dalles?

A. Lots of them had fish.

Q. Did you ever see any Indians coming from The Dalles with fish?

A. No.

Q. Now, did you hear the Indian talk about where their fishing places were and where they were going, and so on?

A. Well, most of them said Tumwater was their fishing point there.

Q. Did you ever hear any of them say anything about having any fishing place on the Oregon side?

A. No.

Cross-examination.

Questions by Mr. Rankin:

— Did they tell you whether Tumwater was on the Washington or the Oregon side, when they were talking about it, Mrs. Wellingham?

958 A. No, they didn't tell me that, no.

Q. They just said Tumwater?

A. Yes. Of course, they knew, I suppose, where it was at.

Q. Now, I don't suppose you know where those trails are that run along the river, do you?

A. Well, I know where some of them are. I suppose they are changed to what they used to be.

Q. In the times when you were acquainted with them, do you know where the trails ran from Wish-ham, that is here just above the narrows, down to The Dalles?

A. Yes. I know where two of them was.

Q. Where were they, Mrs. Wellingham?

A. I don't know as I could tell you on the map.

Q. Just give us a general idea if you can. Here is The Dalles down here; coming up through Three Mile Rapids, Covington Point, Seufert's cannery, canal and Big Eddy.

A. There was one right down Three Mile, and there was one went down just about a quarter from our place.

Mr. Bennett: This is Three Mile on the Oregon side he is asking about.

A. Three Mile on the Oregon side?

Q. Yes.

A. I don't know anything about that.

Q. Those that run from Wish-ham to The Dalles is what I want to know.

A. Well, that is on the Washington side.

Q. Yes, on the Washington side.

A. Well, that is all.

959 Q. Where did they go, please?

A. Both of them went through this, what we call the Frank Taylor place.

Q. Where was the Frank Taylor place with respect to Big Eddy?

A. It is different now. It is Rorick's or some place like that.

Q. Rorick's place I understand is over here?

A. Yes.

Q. Do you know where Three Mile Rapids is above The Dalles?

A. On the Washington side?

Q. The river runs through here.

Mr. Bennett: If you will state these matters, state them correctly. When you state to the witness the Rorick place is down there in that corner, it is not fair.

Mr. Rankin: I shall endeavor to do my best, if you will just give me an opportunity, please.

Q. You recognize the city of The Dalles here?

A. Yes.

Q. Rockland across the other side is now called Grand Dalles, I believe.

A. Yes, I know it is.

Q. Coming up the river, I believe the testimony is—I don't think

counsel will object—the first rough water you strike there is Three Mile Rapids. Do you know where that is?

A. That is on the Washington side.

Q. Well, it runs clear through. Do you know where the Seufert Bros. cannery is up here?

A. Yes.

Q. It is down below there. Now then, the testimony also is that this was the Gillingham place marked "G."

960 A. Gilmore place.

Q. Gilmore place, you are right. Now, then, did you know what they call Colwash Bottom?

A. Yes, I never was—

Q. The testimony is that Colwash Bottom lays somewhere here from "C B" up into here.

A. Yes.

Q. Now, where would those trails run that went to The Dalles from Colwash Bottom, where did they go?

A. Well, I am not much of a map hand, I tell you.

Q. Tell us, as your memory serves you, where they went, and perhaps they can be indicated on the map.

A. They went into this here Tumwater place there.

Q. When they went to The Dalles?

A. Yes, from The Dalles and into this Tumwater, these two trails I am speaking of.

Q. Now, how did they run between Tumwater and The Dalles? Where did the trails go—through what places?

A. They both went through this pasture of Mr. Taylor's.

Q. Mr. Taylor's?

A. Yes. One of them was a road and the other was a trail. One of them they went with their wagon and the other they went horseback.

Q. How far did they come from Big Eddy?

A. Big Eddy was this side.

Q. How close did they go to Big Eddy?

A. I could not tell you that, how close.

Q. Just the best of your recollection, Mrs. Wellingham.

A. Well, it must have been maybe two miles, maybe not so far.

I could not tell you.

961 Q. From Big Eddy?

A. Yes.

Q. Now, where did they go? Did they run between the Gilmore place and the river, or the other side of the Gilmore place?

A. The other side.

Q. The other side of the Gilmore place?

A. Yes.

Q. How far?

A. Well, about two miles pretty near. Maybe not quite so far, the first one was not, but the other one was about three miles.

Q. Now, were there any trails between the Gilmore place and the river where they went through?

A. No.

Q. No places?

A. Not without letting down fences to go through.

Q. Now, with respect to the trails that led out of Wish-ham, where did they go, when they went I will say north or northeast?

A. Is that what you call Colwash Bottom?

Q. Yes, we will say Colwash Bottom now, where that is.

A. There was a wagon road went right through there.

Q. Where did that go?

A. That went up the river to a ranch up there.

Q. Do you know whether it went beyond that or not?

A. Yes, it went clear up the river.

Q. Clear up the river?

A. Yes, the road did.

Q. Well, now, would you notice all Indians that passed over those trails?

A. Well, I seen quite a good many of them.

962 Q. These trails that were two or three miles from the Gilmore place, would you see all the Indians that passed up and down those?

A. One of them we could.

Q. How about the other one?

A. Once in a while we passed along there and seen a bunch coming up.

Q. That was occasionally?

A. Yes.

Q. You don't mean to be understood as stating that they never brought any fish back from The Dalles with them?

A. That they did?

Q. That they did not.

A. They did not.

Q. That is, that you observed. You didn't notice all the Indians that passed between Colwash Bottom and The Dalles?

A. I have seen quite a few, but then I didn't see any fish with them.

Q. You didn't see any fish with them?

A. No.

Q. You were just a girl living there with the Gilmores?

A. Yes, sir.

Redirect examination:

Q. Were you grown when you went away from there?

A. Yes, sir.

Q. Now, how far was the Gilmore place where you stopped from The Dalles?

A. A mile and a half from the river.

Q. Now, these trails that you have been talking about, that led from Tumwater to The Dalles, did they come into the road from Goldendale to The Dalles which passed your place?

963 A. Yes, sir.

Q. Well, now, did they come into the road between your place and The Dalles, or between your place and Goldendale?

A. Between our place and Goldendale.

Recross-examination:

Q. Were there any other trails that you knew of that ran outside of the road and between there and the river?

A. None that I know of.

Excused.

964 LEO F. BRUNE, called as a witness for the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

— Mr. Brune, where do you live?

A. I live at Grand Dalles, five miles back from the station.

Q. Some of the witnesses here have referred to Leo Brune's place.

Is that your name—Leo Brune?

A. Yes, sir.

Q. Do you live on the road between Goldendale and The Dalles?

A. Yes, sir.

Q. About how far from that road is your house?

A. I think it is a little more than a quarter of a mile.

Q. How long have you lived there?

A. Well, we have lived out there at the ranch—I think we moved out in 1877.

Q. How old a man are you?

A. I will be 43 years old the 19th day of next April.

Q. Was your father at any time owner or part owner in a ferry between Rockland and The Dalles on that road?

A. Yes.

Q. Now, was that before or after Mr. Jensen was interested in the ferry?

A. That was before.

Q. Now, you have lived in this same place all the time that you have lived over in that country, have you?

965 A. Well, when I was born and up to four years of age or about four years of age, my father was running the ferry. We lived at the ferry between The Dalles and Grand Dalles. And then I think it was 1877 that we moved out to the ranch.

Q. And how long have you lived there since?

A. Well, I was away from there a few years—I think five or six years. Of course I would go down there once in a while, but I have been there steady now for ten years. And then I was there all my life all but about six years, I think.

Q. I will ask you do you know where the trails, the old Indian trails from the berry patches, Simcoe and the Blockhouse, leading to the Columbia River—

A. Yes.

Q. Leave the main road?

A. Well, to begin with, there wasn't any roads. There was just Indian roads, and it was not fenced, so they would travel right

straight through the country. At the present time they are traveling country roads because the country is all fenced. But originally they had straight trails that just went straight through the country.

Q. Well, I am asking you if you know where those old trails were?

A. Yes, I do.

Q. Now, where did they leave the main road with reference to your place?

A. Well, when we first settled on the ranch one of the main trails going to the Klickitat River and the berry patch went right in front of our house—went right by the house. That was one of the main trails.

966 Q. How close to your house?

A. Well, I think probably about 50 yards.

Q. How has it been since that time?

A. Well, after the country has been fenced, why, they traveled that one road, that is about half a mile west of the house, or three-quarters, and the other road is a little better than a quarter of a mile, on the Goldendale road.

Q. Now, to what extent in those early days and during the time that you lived there were you acquainted with the Indians?

A. Well, I used to see them every few days, and every now and then I used to go down to their fishing grounds and saw them quite often. They used to work for us every now and then.

Q. Do you talk Chinook?

A. Yes, sir.

Q. To what extent?

A. Well, everything in general that they were interested in.

Q. Now, you said that you had been down to their fishing grounds.

A. Yes, sir.

Q. Now, where were the usual and accustomed fishing grounds during those years that you lived there of the north bank Indians, now known as the Yakimas?

A. Well, the only real fishing grounds, or exclusively where they fished, the Indians called it Tumwater, and some people call it Wish-ham. The Indians that lived there called it Nick-lube, and that is where the village is that is now called Speedus, and their fishing ground was right in front of the village, I should judge, extending for about half a mile, is where they done all their fishing.

967 Q. Were there any other fishing grounds anywheres along the river?

A. I never heard of any or saw any. They done some fishing up at Celilo, but I never was up there.

Q. You wasn't up there?

A. No.

Q. But you knew of that as an Indian fishing place?

A. Yes, I heard that talk a great deal about going up to Celilo every now and then.

Q. Now, then, did you ever hear, either from the Indians' talk, or in any way, of there being a fishing place for the north bank

Indians, now known as Yakimas, on the point known as Three Mile Point, on the Oregon side?

A. No, sir.

Q. When the Indians came by your place, to what extent did they stop there?

A. Well, when we lived right near the trail they used to stop quite a bit, and then sometimes they would peddle salmon around there and come to the ranch and sell fish.

Q. How far back was that?

A. The ranch from the fishing grounds?

Q. When they stopped there to sell fish.

A. Well, I don't know. I think it is about the latter part of the 70's and along in the 80's. In fact, they continue to sell fish there. Sometimes they bring fish up to the ranch; sometimes I go down there and buy them from them.

968 Q. Which way would the Indians come from when they had these fish?

A. They generally came from the fishing village down there.

Q. You mean at Tumwater?

A. Yes.

Q. Now, state what the facts are as to whether or not you ever knew Indians to come from towards The Dalles City with fish, carrying fish.

A. No, I never did.

Q. From your talk with the Indians, did you ascertain when they went to The Dalles for what purpose they went there?

A. They generally went there to trade, and sometimes they took salmon to town to sell.

Q. Now, what Indians would it be that would take salmon to town to sell?

A. It is those Indians that lived there at the Wish-ham village.

Q. Now, what do you say as to the custom of these Indians as to going across the river to the Oregon side to fish?

A. Well, I never knew of any going over to fish; and in all my talks I never heard one mention that he ever went over there to fish.

Q. Now, Mr. Brune, what kind of a place was this at Wish-ham where they fished?

A. The river?

Q. Yes.

969 A. Well, the river is very narrow and very swift; and the fish, of course, going up there they go along the banks a great deal and that is where the fishing—that is where the Indian fishing ground was—because they would catch them with dip nets. you know; and then sometimes when the water was clear they used to spear them. And that was about the only place they could catch fish that I knew of.

Q. What is the character of the shore along there in front of the river and between the village and the river?

A. Well, the shore is quite rocky and rough. You cannot hardly get down with a horse right to where they fished. You generally have to go afoot down there.

Q. Well, now, what do you say was the custom of the Indians as to owning and claiming the places where they fished?

A. Well, as far as I know, each Indian kind of had his individual place, his individual rocks where he stood to fish.

Q. And what do you say as to their custom during all those years you have known them as to selling the fish?

A. Well, I don't quite understand you. I don't quite understand the meaning of your question.

Q. Well, I want to know what their custom was as to selling fish, whether they sold fish or whether they didn't sell them.

A. Oh, they have always sold fish ever since we have been there in the country.

Q. Now, these Yakimas, these Indians that came from the Yakima and came from the Reservation out there, the Yakimas proper and the Klickitats, from their talk how did they get their fish?

970 A. Well, according to the old Indian law, as I was told by the old Indians, that they were not allowed to fish at all, but they would come there, for instance, the Klickitats, they would come there and trade—they would trade deer meat and camas and stuff that way for fish; but they were not allowed to fish there. They were not supposed to have any interest in the grounds at all.

Court: Do you know whether they traded with the Indians down the river?

A. No, I don't think they did. Most of the Indians that came in, of course, always came from the interior—they come over from Yakima a good deal—and of course a good many of those Indians are the Indians that originally lived there along the river and belonged to that village. Sometimes they go down to White Salmon and get fish. I think there is a fish hatchery down there, and they get some fish there in the fall. I think the hatchery gives them the fish, if I am not mistaken.

Court: They do that now. They haven't done that many years, have they?

A. I don't think so.. I think it is something that has just been of late years. I think originally they didn't use to go down there to get any fish.

Q. You might as briefly as you can explain how those trails from Wish-ham ran out, explain what you mean by saying they converged there.

A. Well, there is a kind of what we call the Indian road that goes down to Wish-ham, and whenever those Yakima Indians come in, instead of coming to The Dalles they always turn in and go down to this Indian village, and they make their camp there

971 while they are either trading or probably fishing themselves.

Of course, a good many of those Indians have relatives there and originally lived there, the Indians that come in there at the present time.

Cross-examination.

Questions by Mr. Rankin:

— Will you just explain, Mr. Brune, the road from Yakima, the trails that the Indians used to take from Yakima to The Dalles?

A. Well, they had a trail—before there was any roads they had a trail that went about northeast or a little more north, right straight through the country and on to the Block-house; and then from the Block-house over to Simcoe.

Q. That is the Goldendale road?

A. No, that was west of the Goldendale road. That is the old main Indian trail.

Q. Did they also have the Goldendale road?

A. Well, I suppose some of them. Afterwards, of course, that country has been fenced for quite a number of years, and since it has been fenced they travel—I don't think at the present time—a good many of them travel by Goldendale, but I think most of them travel yet by the Block-house.

Q. Now, were there any trails between your place and the river?

A. Well, originally, you know, the one main Indian trail that went to the big huckleberry patch at Mt. Adams went right by our place.

972 Q. That doesn't answer my question, Mr. Brune. I want to know if there were any trails between your place and the river running parallel with the river.

A. No. No, there is no trails parallel.

Q. I mean in olden times.

A. No. These trails went straight back away from the river, you know.

Q. How did they get to The Dalles from your place?

A. Went down the wagon-road; that is the main Goldendale road.

Q. Before there was a wagon-road?

A. Before there was any wagon-roads?

Q. Yes.

A. I don't know how far back—you know that is one of the oldest roads of the state. It was an old military road to begin with that was built from Fort Dalles out to Fort Simcoe.

Q. And they used that in going from your place down to The Dalles?

A. Yes, that is the road we traveled.

Q. How far is that from your place?

A. That road was about, oh, I guess it is a little better than a quarter of a mile. It is the same road that is traveled at the present time.

Q. Weren't there other trails they could use and get to The Dalles besides going by your place?

A. No, the main trails went right through our place.

Q. That is the main trail?

973 A. The main trail. The main trail went by our place going to Yakima, also going to the big huckleberry patch. That is where most of the travel was traveled over.

Q. You have stated that——

A. Yes.

Q. Now, were there other trails?

A. Well, I think there were some other small trails. I suppose there was a trail went to Lyle down the river, and there was a trail went up the Columbia River.

Q. As a matter of fact, there were about five or six trails that ran together at what they call Colwash Bottom, didn't they?

A. Yes, the most that comes into Colwash Bottom.

Q. And from there they distributed to the berry patch and the Yakima county and up the Columbia?

A. Yes.

Q. You spoke of being away from there six years. Where were you those six years?

A. I was up around Kennewick and Ellensburg.

Q. Were you there during those six years?

A. Yes.

Q. What years were you in the Hill Military Academy here?

A. Well, I was here, I think, in 1889 or 1890.

Q. How long did you attend Hill Military Academy?

A. Well, I was here six months the first time, and three years afterwards I was here about three months.

Q. Then there was about nine years. How long did you attend the Hill Military Academy?

A. Well, I went one winter—Started in in the fall and went one winter—and then I went to one term, half a year one year.

Q. How long altogether?

A. Let's see. I think the school term is something like
974 about eight months the first year, and either three or four months the second year.

Q. Well, was that all? You attended two years? I still haven't an answer to my question.

A. Well, I attended one fall, winter and spring; and then another year I started in about January and stayed there till May some time.

Q. Well, practically two years then?

A. No, it isn't two years, because I was just here part of the years.

Q. Now, that is not included in the six years you mentioned that you were away?

A. No.

Q. That would be about eight years that you were away from there parts of the season at least.

A. What is that?

Q. That would be eight years that you were away from the place up there part of the year at least.

A. Yes, part of the season, not all the time.

Q. Are there other times you were away besides your attendance at Hill Military Academy and the years you spent at Kennewick and Ellensburg?

A. No.

Q. There was no other time that you were away?

A. No.

Q. The chief part of your knowledge concerning these Indian customs was derived from that Indian called Gold Digger John, was it not?

A. Well, he worked for us about 35 years.

975 Q. Isn't that the chief source of your knowledge of the Indians?

A. No, I am well acquainted with all of them. I have talked with all of them.

Q. Do you know Wasco Charley?

A. No, he belongs over on the other side. I have seen him, but I am not much acquainted with him.

Q. Do you know Peter Jackson?

A. No, I do not.

Q. Do you know Jake Andrews?

A. Yes.

Q. How long did you know him?

A. Well, I really don't know. He was around there quite a number of years.

Q. Where did he fish?

A. Well, he used to fish up there around the Big Eddy, somewhere just above. I think he was with the Bill Charleys—I don't know.

Q. You don't know any other place he fished than at Big Eddy?

A. No, I do not.

Q. You were never a fisherman, and your people did not fish?

A. No.

Q. How far did they live from the river?

A. We lived about three miles from the Wish-ham village.

Q. That was about five miles from Rockland?

A. Yes.

Q. Or the Grand Dalles?

A. Five and a half, I think.

Q. Now, those Indians that passed from The Dalles going back up to the Yakima, didn't you ever see them with any fish?

A. Well, not coming from The Dalles.

Q. Yes, I mean coming from The Dalles and going back up to the Yakima.

A. No, I never saw any coming from The Dalles with any.

976 Q. I don't mean fresh fish.

A. I never saw them carrying any fish of any kind.

Q. Any kind—packed—ever smell any?

A. Yes, that is, if you got them you could smell them. That is the reason I didn't think they had any.

Q. You didn't smell them either?

A. No, I didn't smell them.

Q. Do you know how they packed their fish?

A. Yes.

Q. You never saw any of those packed?

A. Yes, I have seen them. They generally put them in sacks or big bags of some kind.

Q. Is that the pack you think they used to carry their fish back in?

A. They generally carried them that way when they got them dried.

Q. In big bags?

A. Yes.

Q. Did you ever see any Indians fishing on the Oregon side?

A. No, sir.

Q. Never, at any place?

A. No, sir.

Q. You spoke of the fish hugging the shore. Do you understand the habits and character of the fish as they run up and down the river?

A. To a great extent, I think.

Q. They hug the shore, do they, close to the bank?

A. They seem to very much there. Of course they may have been out in the middle, but when the water would boil, you can see them boil right up with the water.

Q. You spoke of spearing and dip-netting. Are those places the same—can you spear and dip net at the same place?

A. They use the same grounds.

977 Q. Have you seen them doing that?

A. Yes.

Q. Do you know what is the preferable place for spearing?

A. Yes, it is right there, right below the village; in fact, right in front of the village.

Q. That is at Wish-ham?

A. Yes.

Q. That is the only place on the river that you are really acquainted with, is it not, Mr. Brune?

A. Well, it is the only place that I saw Indians fishing.

Q. And that is as far as your knowledge of Indian fishing goes, it is limited to Tumwater?

A. Yes. I have been other places along the river, but I never saw them fishing.

Q. You stated you never saw them fishing at Celilo.

A. No, I never saw them fishing at Celilo. I have heard them say, though, they catch fish there.

Q. That is hearsay on your part?

A. Yes.

Q. You spoke about the Indian habit of fishing, a family fishing at one place?

A. Yes.

Q. When a family finished fishing at that place, what happened to it then?

A. I don't know. I suppose it just stands there.

Q. You think all the fish go by and no one helps themselves to them?

A. Well, I kind of—

Q. Isn't it, as a matter of fact,—

Mr. Bennett: Let him answer the question.

Mr. Rankin: Did you wish to add anything more, Mr. Brune?

A. No.

978 Q. As a matter of fact, when the family that has a place finishes fishing there, doesn't anyone go in and help themselves?

A. I never saw it done. I would not say whether they did it or not. But I know once in a while one would put in a little bit of a wheel and the others would get very angry, and sometimes they would tear it out and it would disappear.

Q. You were speaking of wheel fishing?

A. Well, yes, a little bit right in their fishing grounds there.

Q. You are speaking of wheel fishing?

A. Yes.

Q. I am speaking of dip net fishing. Did you ever see an Indian come in and fish at a place where you had seen other Indians fishing with dip nets previously?

A. No, I don't remember that I did. I have gone down there and they would be all strung in there—each one had their different places. I would not say if they would allow any one else to fish there or not. But the way they were fishing there, and always finding them at the same places, I always supposed each one had their fishing place.

Q. That was supposition on your part, and you never really observed it with regard to the Indian custom.

A. Only as far as I could see and know, is all; and just my opinion on what I saw is all.

Q. What was your business back on the farm, Mr. Brune?

A. We have always been in the sheep business.

Q. You never spent much time at the Indian fishing places, I suppose?

A. Oh, when I was a boy I used to go down there hunting or go down and watch them fish a great deal.

979 Q. How much time did you spend down there?

A. I don't know really what I—sometimes I have a good deal of dealings with them. I lease land from them and go down to see them once in a while. Other times I go down to buy fish from them. I don't know just how much time I have put in there.

Q. When you were a boy you were not leasing land from them, were you?

A. No.

Q. How much time do you suppose you spent down there?

A. Well, I really would not know. I would be down there quite often, maybe once in two weeks, maybe sometimes once a week, maybe sometimes it would be once a month.

Q. You didn't associate with the Indians in any way?

A. Oh, no.

Q. You spoke of having sheep and leasing land. You had some trouble, did you not, with the Indians up in the huckleberry patches?

A. No, never had any trouble with Indians.

Q. Where the sheep went up and take huckleberries off?

A. No, I don't run my sheep on the huckleberry patch. I run them on the south side of Mt. Adams, not anywhere near the huckleberry grounds.

Q. Didn't they get in the huckleberry grounds one year?

A. No, they never did, never. You can go and look my record up and see for yourself.

Q. Those Indians that went to The Dalles, do you know where they went?

A. Yes, they just went down to The Dalles to trade and stand around there, and visit a while in the town.

980 Q. And they didn't go any place else but The Dalles?

A. I never saw them go any place else.

Q. Did you see them cross the river?

A. Yes.

Q. Didn't they have fishing outfits?

A. No. As a rule, they take fish over to sell a great deal, fish that they have caught up at Wish-ham.

Q. They never had any fishing outfits down there with them at all?

A. No.

Q. Now, when you speak of those Indians going down to The Dalles, do you mean just the Indians that live at Wish-ham, or those that came from the Yakima?

A. Well, it is mostly those that live at Wish-ham. Sometimes when those come down from Yakima, they are very fond of town, and they will go in and trade and visit too.

Redirect examination.

Q. Now, you have told Mr. Rankin what you saw down there yourself at the fishing. Now, what was the talk of the Indians that you talked with, in relation to whether each one had his own place that he owned or not?

A. Well, I don't know. I don't recollect exactly what they have told me on that question. I know that every now and then they would come and tell me their troubles and say that some other Indian was interfering with their fishing down there, or some other Indian had put in a little wheel. And there is the Bill Charley Indians, they do a good deal of fishing, and these others feel very bitter towards them. They seem to have control of quite a bit of the Indian fishing grounds both below and above.

981 Mr. Bennett: There is one more question I wanted to ask.

Q. What were your relations to the Indians all the time you lived there, as to being friendly or unfriendly?

A. We have been very friendly. I have never had any trouble with them.

Recross-examination.

Q. You spoke of a trail that went between Lyle and Wish-ham, from Lyle to Wish-ham.

A. Yes.

Q. I wish you would tell the Court about that trail, will you, please?

A. I suppose the old original trail—I don't know where that run; and then there is a kind of wagon-road that goes down from the Curtis ranch, and there is Indians travel that way now and then coming down towards White Salmon.

Q. They travel that now, don't they?

A. Some; not very often.

Q. Not as many as they did in the olden days?

A. No; by our place was the main arteries, the main trails.

Q. Where does the trail from Lyle on up to Wish-ham, where does it come from on the north side?

A. On the north side of what, the mountain?

Q. No. Leaving Wish-ham, where do you go by that trail?

A. Well, leaving Wish-ham they leave what you call the Indian road and go in. There is a gate, it is between 4 and 5 miles from The Dalles it goes into the Smith ranch. They go on through the Smith ranch and then strike a kind of old road that has been traveled a great many years from the Lyle-Goldendale road down near Lyle—that goes on down over the hill, goes through the Curtis ranch
982 and goes into the Goldendale road; but it comes in further south than the Indians camped down there. They go into Smith's pasture—this gate.

Q. You don't mean to say the Indians don't travel this trail you are speaking of, do you, Mr. Brune?

A. Don't travel what?

Q. The trail you are now describing.

A. Oh, yes. That is what I am telling you that they traveled. Then they strike this old road and follow that on over the hill in going down to Lyle. There is a few Indians live at Lyle and some at White Salmon. When they go to White Salmon they go that way.

Q. When you go from White Salmon up, you go through Wish-ham on that trail?

A. Coming up where?

Q. White Salmon is down the river from The Dalles, isn't it?

A. Down the river, yes.

Q. How far from The Dalles does the trail come?

A. The way they go, those Wish-ham Indians, it is back about four miles or four and a half miles back, north from Grand Dalles. There is no trail down below.

Q. That would be off out here, wouldn't it?

A. Yes.

Q. That comes down where—across to the north of your place or south?

A. No, south of our place. It goes along the south side of our place.

Q. It would come through along this way, along the line that "Washington" is written on this Defendant's Exhibit "G"?

A. No, I think it is further out than that. From the Wish-
983 ham village it starts out and goes to Colwash Bottom.

Q. That is up in here?

A. Yes, away out that way. It would not come down this way at
all. This would be right near the river. This is back four miles.

Q. Was there a branch trail that came off that trail down here
near The Dalles?

A. That is a main old wagon road comes in, you see.

Q. From Wish-ham, where did that trail go?

A. From Wish-ham?

Q. Yes, towards the Yakima?

A. You see, all those roads, you can see, goes through what they
call the Colwash Bottom. From Colwash Bottom there is an Indian
road that goes between two big bluffs, like.

Q. That is called the pass, isn't it?

A. Yes. Well, it is a kind of wagon-road they get into. I should
judge it is about two miles or two and a half miles from Wish-ham
out to the Goldendale main road. That road, of course, takes them
to Yakima or wherever they want to go.

Q. Now, isn't there another trail between Wish-ham and The
Dalles that is traveled by the Indians, and even traveled today?

A. Well, they have got—the last few years they have had different
wagon-roads there, many trails. Sometimes they come through a
man's place by the name of Rorick, and sometimes he locks the gates
and then they will come through another place; and they change
about. Sometimes they will have a gap in the fence somewhere;
sometimes they come out right to Grand Dalles; another time they
will go up about two miles north of Grand Dalles and go

984 through; just wherever they can get through the fences.

Q. Isn't there a trail they travel all the time?

A. Well, yes, I think there is a trail they are traveling at one place
now continually, coming to The Dalles. But it is not going from the
fishing grounds back to the interior. That is just a trail when they
go to The Dalles.

Q. Where is that?

A. That is about two miles, about two miles north of Grand Dalles,
where they are coming out at the present time.

Q. How near does that go to the river?

A. Well, that leaves the river about two miles, kind of makes a
square like—runs north and then goes on east to the Indian village.

Q. To the Indian village?

A. Yes; but that is not an old road. That is what they have
traveled here of late years.

Q. How late do you refer to?

A. Oh, I don't know. They have been going through that gap
there now—well, it is hard to say. Sometimes it was closed up;
sometimes Rorick had it closed up; sometimes he didn't. I think it
has been open there now, they have been traveling there steady a
year now without the gap being closed up.

Q. Did they use that trail away back in the '80's?

A. Well, I 'don't think—not very much. No, I don't remember of Indians going through there in former years.

Q. Do you remember that ground before it was fenced—that territory?

985 A. No; that is some of the first ranches that was fenced, I suppose, in the State of Washington.

Q. You don't remember that before it was fenced. You wouldn't mean to say the whole state of Washington, that was the first part was fenced?

A. I think that is probably some of the oldest settlement in the state.

Q. You mean in that locality? You are not passing on the whole state of Washington?

A. It is pretty old. I know father brought rails up from the Cascades, I think along in the latter 60's. There was not very much fenced in Washington at that time.

Q. Do you remember that country before it was fenced?

A. No. I was not born, so I don't remember.

Q. Did you ever look into the Indian luggage that they carried back from The Dalles?

A. No. You could see some of the salmon sticking out—not carrying it from The Dalles, but I mean when they have got salmon. Coming from The Dalles they always had groceries.

Q. Did you ever look into it?

A. You could see it in the boxes there; and you could see who it was bought from. I crossed with them sometimes two or three times a week, and it was always groceries—what they carried back.

Q. Do you mean to say you always saw everything they carried back from The Dalles with them, Mr. Brune?

A. Well, if they were crossing with me, practically I would see everything they had. Sometimes they had watermelons in
986 their shawls—of course I could not see them, but then I knew they were watermelons.

Q. Were you acquainted with the method in which the Indians put up their fish in little baskets?

Court: I don't think you need go into that.

Mr. Rankin: Very well, your Honor.

Redirect examination:

Q. Mr. Brune, do you know where this point is that is called—the point jutting out from the Oregon shore into Three Mile Rapids, on the Oregon side?

A. Well, I know about where it is.

Q. Now, then, this road that you say the Indians now sometimes travel in the last few years going to The Dalles, how far did that road pass from this point in question?

A. Well, I should judge something like two miles.

Q. That was the nearest that it came to that point?

A. Yes.

Q. And what direction from there?

A. They would pass north of there.

Q. Now, this other road or trail that went to White Salmon—How far is White Salmon from The Dalles?

A. I think it is about 18 miles by railroad, and by road it would probably be 20 or 25.

Q. Below The Dalles?

A. Yes; it is 18 miles I think by rail.

Q. And on the Washington side of the river?

A. Yes.

Q. When they go on that trail how do they start out to go
987 that trail—how would they start out from Wish-ham village?

A. Why, they would go out to the Colwash Bottom and take that main Indian road.

Q. Took the same way by your place?

A. Just below our place.

Q. And how far from your place?

A. It is probably a little over a mile, a mile and a half.

Q. Then when they got to the road, to the wagon-road from Goldendale to The Dalles, how do they get—

Court: I don't think it is necessary to follow that up.

Mr. Bennett: I just wanted to show they didn't go any place near this place in question.

Court: It doesn't seem to me there is very much point to these trails, except the trail coming out from Colwash Bottom and coming over the hills. There is no need of taking up very much time with that.

Excused.

988 F. A. SEUFERT recalled for the Defendant.

Direct examination.

Questions by Mr. Bennett:

— I believe you have already testified, Mr. Seufert, that you are the principal owner in the defendant company?

A. Yes, sir.

Q. Now, I want to call your attention to the testimony of Mr. Lucky and Mr. McFarland as to having fished at a point on the river above The Dalles, and you heard their description of the point. Is there any such point along there on the river?

A. Yes, sir.

Q. Where is that?

A. It is, I should judge, about four miles and a half from The Dalles.

Q. Can you show on the map whereabouts it is here?

A. Yes, sir.

Q. I wish you would.

A. It is right in this channel, right there.

Q. Is there a mark made there?

A. No. There is a mark a little below it.

Q. You mark where you think that is. Here, I will give you a softer pencil. You have one? All right. Mark where you think that is with a cross.

(Witness does so.)

Q. You heard Mr. McFarland's testimony that that place was in front of the Evans—that the place he meant was in front
989 of the Evans place?

A. It was.

Q. Now, where was the Evans place?

A. About—the Evans fishery that he testified to?

Q. Yes, their fishing place, saltery.

A. About 200 feet back of that place.

Q. Now, is this other place down here in front of anything that the Evans owned?

A. No, sir.

Q. Mr. McFarland identified that place as a place that was notorious on the river there as the place where Mark Twain fell in, or something of that kind. Do you know where that place is on the river?

A. I do.

Q. Where is it?

A. Right there.

Q. At the place where you marked with a red cross?

A. I did.

Q. Now, Mr. Lucky said at the place where he saw fishing that there was a perpendicular fall of from 2 to 5 feet. Is there any perpendicular fall down here at the point?

A. At Three Mile?

Q. Yes.

A. No, sir.

Q. Is there up here at this point?

A. There is.

Q. Now, is this fishery that you have marked with a red cross in the main river or in a back channel?

A. Back channel from the river.

Q. Now, is there any back channel down at the point at Three Mile where you ever heard of anybody catching any fish?

A. Back channel there, but I never knew them to catch fish there, unless it was with a wheel.

990 Q. One of the witnesses testified—either McFarland or Lucky, I don't remember which—that at the point they had in mind they caught them with a hook. I believe it was Mr. Lucky, and he said he broke the hook.

A. Yes.

Q. Where is the place on the river where the Indians catch fish with a hook?

A. Just a little below that falls, probably a couple of hundred feet.

Q. How is it with reference to this place where you have marked that red cross?

A. About two hundred feet below that.

Q. Now, you heard the story of one George Tommy here, an Indian witness. Do you know George Tommy?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I guess I have known him ever since he has been a good-sized boy.

Q. When did you first get acquainted with him with reference to the time when you went out there to operate your fishing?

A. Oh, when we first started up near Celilo, I think that was 1889 or 1890. I used to travel up there a good deal, back and forth, myself, to attend to that end. His father used to bring fish there sometimes.

Q. Now, then, about how old was Indian Tommy at that time?

A. Oh, I should judge the first time that I really recollect him, he was probably 18 or 20 years old.

Q. I didn't catch that answer.

A. He was probably 18 or 20 years old. You cannot tell much about an Indian's age.

991 Q. Now, he testified that he used to go down there and cross Five Mile Creek; that he used to leave the village that you have marked Skein here in his boat, and go down through here to Tenino. Where is Tenino?

A. It is right at the head of Five Mile Rapids, what we used to know as Tenino.

Q. On which side?

A. Oregon side.

Q. Well, would you show on the map where that place is, Tenino?

A. Yes, sir.

Q. Mark that with a letter "T" for Tenino.

(Witness does so.)

A. That is right back from this—they camped on this high ground there.

Q. What say?

A. That is right back from this cove. That is sloping into here—the land is about in there.

Q. And that then he would go down and cross Five Mile in a canoe, and that they would fish down here at the point, and that the Indian women would pack their fish back to the boat on their backs, and then take it on up through the river.

Mr. Rankin: That is probably largely true, Judge; but I don't think the testimony stated he crossed Five Mile with a canoe.

Mr. Bennett: Oh, yes. Another witness testified on a foot log, but he testified with a canoe.

Mr. Rankin: You mean the creek?

Mr. Bennett: Yes.

A. I never saw a canoe in there in my time.

992 Q. Now, was there ever any Indian canoes since you have known that place left there at the mouth of Five Mile Creek, or anywheres near the mouth of Five Mile Creek?

A. There was not.

Q. Now, I will ask you, in this same connection, although it refers to another witness, was there ever a foot-log there since you have known it?

A. No, sir.

Q. Now, as a matter of fact, how did people when they crossed there get across Five Mile Creek?

A. All during my time they either crossed the wagon bridge or else they crossed the railroad bridge.

Q. When was the wagon bridge put in there?

A. There was a kind of a wagon bridge there built, I think it was a year or two before we took it. There was a wagon bridge built there I think the year before we got possession of it.

Q. That would be in 1879?

A. No, we didn't get possession of that land until 1884. I think it was '82 that there was a wagon bridge built there, or '83.

Q. Before that wagon bridge was built, if you know, how did they cross?

A. Well, they could—they crossed on the railroad bridge.

Q. How far is the railroad bridge from the mouth of the creek?

A. Oh, it is right at the falls, and from the railroad bridge right into the river is probably 12 or 14 hundred feet—15 hundred.

Q. How practicable is it to get across that creek anywheres below the railroad bridge, and get up the banks, I mean, and down?

993 A. You would have to walk right down on the east side of the falls and cross across and climb up on the west side. There is a falls there, I should judge, of probably 25 feet almost perpendicular.

Q. Is the falls above or below the railroad bridge?

A. It is below.

Q. How far below?

A. Well, the railroad bridge crosses right at the top of the falls, and the falls is right down below the bridge towards the river.

Q. Well, now, how difficult a road would that be for any one to travel?

A. Oh, it would be a very hard proposition to travel. A person wouldn't travel that way unless there was no other way of getting across it. It is very rough country there.

Q. Now, do you know, by general repute in the country there, as to how long there has been a railroad bridge at that point, or about that point?

A. The bridge that was there from the old O. S. N. Company was left there after the O. R. & N. Company built its new bridge in 1880. It was made exclusively out of hewed timber and probably had been there for 20 years or more before.

Q. Before 1880?

A. Yes, sir.

Court: Where was that old wagon-road bridge?

A. The two railroad bridges were probably 50 feet apart; and the wagon bridge is probably about 200 feet above the railroad bridge.

I recollect we built it just far enough not to be bothered with the cinders from the O. R. & N. Company setting it afire.

994 Court: You said the railroad bridge was built about 20 years before 1880.

A. Yes, somewhere along in the fore part of the 60's. It was built on the narrow gauge—it was a narrow gauge bridge.

Q. Was that the old Portage Road from The Dalles to Celilo?

A. Yes, sir.

Q. Now, when the new bridge, when the railroad bridge was built in 1880, what became of the old railroad bridge?

A. Oh, it stood there for a number of years afterwards.

Q. About how many years?

A. I think it was the high water of the spring of 1890 that the ice came down and tore the piers out and it fell in.

Q. Now, before that, how was it as to being passable—on foot?

A. Oh, you could go across it.

Q. Which railroad bridge—when the people used a railroad bridge before that was washed away, which one did they use, the old one or the new one?

A. They used the new one—the ties were closer together on the new one.

Q. Now, any one going along there and crossing any of those bridges, where would they have to go with reference to your cannery, after your cannery was built?

A. They would have to go right between my residence and the cannery. My barn stood about here and my residence there, and the cannery over here, and they would have to pass right through.

Q. Now, how far, if at all, in going along there would they be in sight of your cannery and of your house?

A. Well, when they were coming from the east, we could see them probably a quarter of a mile before they would come. When
995 they were coming from the west, we would probably see them a little over a quarter of a mile. We would look right into and as far as what we call the Covington place.

Q. Now, did you ever see any Indian women or Indians of any kind packing fish along the river, or packing fish along there, at any time, up the river.

A. I never saw them pack fish up the river.

Q. Now, what do you say as to whether you would have seen them if they had been doing that with any frequency?

A. I could not hardly have helped it, because I was right there for a good many years.

Q. Did any Indians pass there at all, going either way?

A. Oh, yes, lots of them.

Q. And Indians that were going down the stream, would they be packing anything?

A. Yes, they would be packing fish sometimes down to the cannery, and sometimes packing it to town.

Q. Packing fish where?

A. Sometimes they would bring them to the cannery, and sometimes they would go on with them to town.

Q. To The Dalles?

A. Well, down that way.

Q. Or in that direction, I mean?

A. Yes.

Q. Now, what do you say as to it being possible any time in the spring or summer of the year to go up through Ten Mile Rapids, as Tommy said he did, with a boat?

A. He could go through Ten Mile Rapids at any time.

Q. Now, some of the witnesses spoke—another witness spoke about a channel back—about going through a channel back north of Ten Mile Rapids. Is there a channel there?

996 A. Yes, sir.

Q. What do you say as to whether people ever go through that with a boat?

A. Well, at certain stages of the river they can go through there very comfortably by keeping close to the Washington shore.

Q. What say?

A. At certain stages they can go through there very easy by keeping to the Washington shore.

Q. Now, then, is that at any stage of early fishing?

A. No, sir.

Q. How high does the water have to be at The Dalles before it runs through that channel at all?

A. Oh, I should judge 15 or 13 feet.

Q. 15 or 16 feet.

A. Possibly a little more or a little less, I am not sure.

Q. Now, I believe you testified on your other examination in relation to the conditions around the point in question and to the extent of fishing there. But you have heard the testimony of some Indian witnesses that up to 15 or 20 years ago they kept canoes or boats at that point and across the river on the other side.

A. That is not true.

Q. Have there ever been any Indian boats there since you have been acquainted with those points—kept there?

A. For that purpose?

Q. For any purpose?

A. No, sir.

Q. Now, if there had been any boats kept there and stored
997 away on the higher land on the two sides of the river during the winter time, would you have seen them?

A. I would.

Q. What, if any experience, actual experience, have you had in using a dip net yourself?

A. When I first went up there to what they call the Evans fishing, I had to do it by dip net. I didn't have money enough to build the wheel.

Q. When did you build your first wheel on the river?

A. 1886.

Q. Now, before that, how did you catch your fish?

A. Dip net.

Q. Did you work yourself in those days?

A. Yes; I have not practically got over that yet.

Q. I know; but I mean with a dip net?

A. Yes, sir.

Q. You don't do that now?

A. No, I cannot do that now.

Q. What observations have you had—what opportunity have you had to observe Indians and white men in the use of a dip net?

A. Oh, I have hired a good many of them—taught some of them.

Q. Well, have you seen them dip-netting?

A. Yes, sir.

Q. How much?

A. Oh, I have seen them every year since I have been there.

Q. Now, what kind of water do they dip-net in?

A. Well, it usually takes a place where the water is quite
998 swift, not too swift, and the current is straight.

Q. And the current is straight. I would like to see that picture that was marked for identification, showing several Indians fishing on the shore. I wish you would examine that picture, and state to the Court what it is.

A. That is a picture of the island on the south side of the Columbia River near Celilo.

Q. When was that taken?

A. Oh, I have not any idea.

Q. Well, is there anything on the picture? I see a crib running out into the river. Do you know what that is?

A. Yes, Mr. Taffe built that either somewheres along in the 90's, fore part of the 90's.

Q. Is that there yet?

A. I don't think so. It has all been destroyed since, Judge. The ice took it away.

Q. About when was that, that the ice took it away?

A. It was only there a year or two.

Q. About when would it be taken away?

A. Well, that was probably taken away in the winter or two winters after it was built.

Q. Now, then, could you tell from this picture whether it was taken before or after that?

A. This picture was taken before this was taken away.

Q. Yes.

A. No, it is there.

Q. Well, then, it was taken before, was it?

A. It was taken away after this picture was taken.

Q. Well, I mean was the picture taken before or after that
999 crib was taken away?

A. That picture was taken before that crib was taken away or it would not show.

Mr. Rankin: The picture shows for itself.

Mr. Bennett: I know it does; but I was trying to get as near as I could.

A. I don't know who took that picture.

Q. Now, does that show good fishing water, dipping water with a dip net?

A. Yes, there is places in there very good dip-netting places; and there is places that are impossible.

Q. Does that illustrate the character of water that is necessary for dipnetting?

A. Yes, practically, because the water has to run straight and swift.

Mr. Bennett: Now, we offer this in evidence, your Honor.

Court: That is, you dip net from this side of the stream?

A. Yes, sir; there where the Indians are.

Mr. Bennett: Are those Indians actually engaged in dip-netting in the picture?

A. Some of them are dip-netting; some of them are probably hooking.

Mr. Rankin: I object to this, Your Honor, as it does not show the dip net place at all. It shows in the immediate foreground some Indians upon a bank; and over that bank one can see the falls and the foam from the falls; but it doesn't show the character 1000 of water in which they dip net at all. It does not show the water next to the bank or where their nets are being placed; and there is no explanation of it other than this.

Court: The objection will be overruled.

Marked "Defendant's Exhibit C."

The record may show that the picture referred to is Defendant's Exhibit C.

Q. Now, I will ask you whether or not any of these locations on the lower side of this point in question is a dipping place, or dipping water?

A. It is not.

Q. Now, just explain to the Court why it is not a dipping place and why it is not dipping water. I am speaking now particularly at the lower stages of water.

A. Well, the river comes down almost northeast, makes a turn there, which is a little northwest, if anything, and then comes around, goes down stream. The consequence is there is very deep water there. I suppose there was not any place there before that point was blown off but what there was over one hundred feet of water. The consequence is, when that water strikes the Washington side it swings over to the Oregon side and then rolls out until it gets where the river is wide enough that it can get a straight flow again.

Q. What kind of water do they dip in? Just describe that in words to the Court, so we can have it in the record.

A. Well, they need shallow—they dip shallow in the water. It doesn't particularly make any difference how deep the water is, just so the current is straight that they can bring the net to go straight.

1001 Q. Can they dip in still water?

A. Oh, they could dip there, but never do, because it is impossible to catch a fish in still water.

Q. Well, why?

A. Well, the salmon is not there to commit suicide. When he sees a net coming he gets out of the way of it.

Q. Well, now, then, with reference to that, what kind of water is it then that they can fish in?

A. Well, it wants to be swift and it wants to be white from the swiftness, and it wants to be mostly a little riley in the spring. The most dipping that is done is April, May, June, and the fore part of July.

Adjourned until 10 A. M.

1002 PORTLAND, OREGON, February 1, 1916—10 a. m.

Mr. Bennett: We desire to withdraw Mr. Seufert and call some other witness out of order. He desired to go home.

Court: Very well.

HENRY GUY WHIPPLE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows.

Direct examination.

Questions by Mr. Bennett:

— Mr. Whipple, are you in the employ of Seufert Bros.?

A. I am.

Q. And how long have you been in their employ?

A. Fourteen years.

Q. What have you been engaged in doing?

A. Principally seining.

Q. In working for them, did you work above the cannery or below the cannery?

A. Above the cannery.

Q. Have you a knowledge of the conditions from the cannery up towards Celilo, during the time that you have been there?

A. I have.

Q. Have you been along the river up there from the cannery up?

A. Quite a good deal.

Q. Are you acquainted with any of the Indians along up there?

1003 A. That is, I know them by sight; not by name.

Q. What is that?

A. I know them by sight, but not by name.

Q. Now, do you know what the custom has been during the time you have been there as to which side of the river the Washington Indians fish on, and which side the Oregon Indians?

A. I have always understood that the Oregon Indians fish on the Oregon side and the Washington Indians on the Washington side.

Q. Now, have you ever known during the time you have been there, any exception to that rule?

A. Only one.

Q. Now, have you ever heard any talk among the Indians about that, about their sides of the river, and their rights, respectively?

A. Only in this one instance.

Q. And what case was that?

A. Well, that happened about a year ago last fall.

Q. What brought it up, that is what I am getting at?

A. Oh, it was a Washington Indian wanted to fish on a small island in the Celilo Rapids on the Oregon shore, and they objected. In fact, they would not let him fish.

Q. What say?

A. They would not let him fish.

Q. Do you know of any cases about the Oregon Indians going over on the other side?

A. No, I do not.

Q. Now, has Mr. Seufert any fishing on the Oregon shore, in the vicinity of the Big Eddy or above?

1004 A. Only fish wheels and——

Q. Well, now, when a run of fish comes at that place, how long will it be before they are up to Tenino at the head of the rapids?

Mr. Rankin: If it please the Court, I will interpose the same objection as has been interposed heretofore about the fishing places above the point in question as being too remote, having nothing to do with the issues of the case and not involved under the treaty rights in this matter.

Court: I presume this is offered to show the habits of the Indians as to fishing places. I don't think it would be relevant to prove other fishing places, only to show the habits of the Indians as to the fishing places.

Mr. Bennett: Well, your Honor, there was a double purpose in this. Your Honor will remember that they have gone into all kinds of things here, and the Court has admitted them on the theory, a good many of them, that this was a court of equity, and that it might throw some light upon the case, and if it didn't, why, the court would not consider it. Now, then, in this case we offer this partly for the purpose of laying a foundation to show that the Indians had good fishing places here and also at Celilo. Of course, this question does not call for that, but that is what we expect to follow it up with, for the purpose of showing the unreasonableness of their story that they went down here. Now, this particular question is directed towards their claim that the fishing was so much earlier down at this point than it was up here.

Court: Well, I suppose it is admitted that there were fishing places opposite Wish-ham up there; that was a good fishing place,
1005 and also up at Celilo. I suppose those fishing places on the Washington side are admitted, as far as that is concerned.

Mr. Bennett: We also want to show that they are, and that espe-

cially this one is an early place for fishing. That they can fish there just as soon as the fish come into the river, and particularly along that line. That is, we expect to show—of course, it does not do any hurt to state what we expect to show to your Honor at this time—it is not like a jury. We expect to show that it only took a few hours for the fish to come from the Big Eddy up to this point, and only a day and a half or two days or something like that to get from this point here at the Big Eddy clear up to Celilo. Now, of course, we can't bring it right down to this particular point, because there was at least according to our contention no fishing done down there; but we will bring it as near as it is possible to and within a mile of this point.

Court: Well, you may proceed on the assumption that those fishing points on the north side have been fixed, and now you desire to show the habits of the fish, how long it takes to get up from the point below up to that point.

Mr. Bennett: Yes, we are undertaking to show there is no two weeks or four weeks from the time the fish come down below there until they get up.

Court: Well, you can show that.

Q. Now, you may answer my question, then, Mr. Whipple—How long is it from the time that a run of fish come in here until they will be catching them up here?

A. Less than 12 hours.

1006 Q. And how is it from the time a run of fish comes in here and they have begun to catch them—how long will it be before they are up here in Celilo, catching them there?

A. In the neighborhood of about 36 hours.

Q. Now, I want to call your attention particularly to this place and to the stages of water at which they can fish there early or late. I will say that this is the point; I will say that this is Tenino here, and this is the Indian village opposite here; and the fishing I am asking you about is the fishing at the head of Five Mile Rapids and immediately in front of the village now called Wish-ham, or called by the Indians Wish-ham. And I am asking you—You understand the location, do you?

A. I understand the location.

Q. Now, what I am asking you is, what is the fact about the fishing there as to the different stages of water. What I want to get at is, whether there is only one stage of water they can fish at, or whether there is more than one stage of water they can fish at, and just about it; whether they fish there. You understand my question, don't you?

A. Yes, sir.

Q. Well, then, answer the question.

A. Why, they fish there at most all stages of water.

Q. How is it about the early fishing there, as soon as the fish come into the river?

A. Then they fish right in the main channel.

Q. In the main channel right there?

A. In the main channel, in the main river.

Q. How is it about being a good fishing place?

1007 A. There is only an hour or so, or a few hours difference, less than 12 hours difference from there up there.

Q. What do you say as to that being a good place to fish also?

A. Because it is white swift water.

Q. Well, is it a good place to catch fish or not? Cannot you answer that by yes or no?

A. Yes.

Q. Then how is it later in the season?

A. Well, there is channels back there that as the water comes up they fall back to these channels at different stages, until they get back most, practically, to the village.

Q. When you say they wouldn't let the Washington Indian fish over there, whom do you mean by "they"?

A. The Oregon Indians—the Wascos.

Q. The Oregon Indians. That is all.

Cross-examination.

Questions by Mr. Rankin:

— Did you ever mark a fish as the Government agents do, and find out how long it will take that fish to go from one point on that river to another?

A. No, sir.

Q. Then the testimony that you have given here about the time it takes those fish there, is simply your opinion from observation?

A. My general opinion from observation.

Q. How far is it from the point marked "W", with a ring around it, known, I believe, as Wish-ham, down to Three Mile, the head of Three Mile Rapids?

A. Well, it is somewhere in the neighborhood of about 2½ miles, two miles—two miles and a half—I don't exactly know the
1008 distance.

Q. You don't know the distance there?

A. No, I don't. But I should judge it is somewhere in that neighborhood.

Q. How far is it from the head of Three Mile, the point marked "C", to Five Mile Creek?

A. Just a little over a mile, as near as I could judge.

Q. And from Five Mile Creek how far is to Wish-ham?

A. About a mile and a half, as near as I can judge.

Q. You stated, I believe, that you have been in the employ of Mr. Seufert for 14 years.

A. Yes, sir.

Q. You were also one of the parties who went down and turned the scow of Sam Williams loose?

A. Yes, sir.

Q. You were down there several times, were you not, Mr. Whipple?

A. No, not several times.

Q. You were down there more than once, were you not?

A. Oh, yes; I was down there more than once.

Q. You were down there most every time Sam Williams appeared off that point, were you not?

A. No.

Q. Under whose directions were you acting down there?

A. Mr. Seufert's.

Excused.

1009 HENRY WICKMAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows.

Direct examination.

Questions by Mr. Bennett:

— Mr. Wickman, where do you reside?

A. The Dalles; Seufert's.

Q. How long have you resided there?

A. About 20 years.

Q. Are you in the employ of Mr. Seufert?

A. Yes, sir.

Q. How long have you been in his employ?

A. About 20 years.

Q. About how long?

A. About 20 years.

Q. During that time what have you been doing for him?

A. Fishing, and working in the winter time around the ranch.

Q. Now, are you familiar with the point known as the point projecting out into Three Mile Rapids from the Oregon side?

A. Yes.

Q. Where the Government blasted off the point there.

A. Yes.

Q. How long have you been acquainted with that point?

A. About 22 years.

Q. State what the facts are as to Mr. Seufert having a wheel in that vicinity anywhere.

A. About half a mile, or a little over a quarter probably, known as the Phelps wheel.

Q. About how far did you say it was?

A. A little over a quarter of a mile.

1010 Court: From where—below the point?

A. Above.

Q. Now, do you recognize this map? If you will just come down here I will show you the main points on it. Here is The Dalles here, and this is supposed to be the point in dispute. This is supposed to be the mouth of Five Mile Creek. This is the Big Eddy. Here are Seufert's cannery, and here is Five Mile Rapids. Here is the Indian village. Here is Tenino, and here is Ten Mile Rapids, and here is Celilo. Now, then, assuming that this is the point in dispute, whereabouts was Mr. Seufert's cannery located that you say was a little over a quarter of a mile away?

A. I didn't say the cannery. I said fish wheel.

Q. I didn't mean cannery. I misspoke myself. I mean fish wheel.

A. It is about right in there (Pointing to map).

Q. How long had that wheel been there?

— Ever since I can remember.

Q. Is that above or below the Gulick wheel?

A. It is above.

Q. How far above?

A. Oh, I should judge a few hundred yards.

Q. Now, have you at different times had charge of the operations at that wheel?

A. Yes, sir.

Q. To what extent during the 20 years?

A. Well, pretty near every year during high water when the wheel was in operation.

Q. How far does the road that comes down to The Dalles pass from that point?

1011 A. Well, I should judge a half mile. The wagon road?

Q. Yes.

A. About half a mile.

Q. Now, what do you say as to whether that point was in sight of the place where that wheel was?

A. I didn't understand that question.

Q. Was there anything to prevent you from seeing that point when you were at that wheel?

A. Nothing. You could see it plain.

Q. You could see it plain?

A. Yes.

Q. Do you know Wasco Charley?

A. I do, yes.

Q. Do you know whether Wasco Charley lived there on that point?

A. Yes.

Q. Now, what if any other Indians during the 20 years lived there on that point?

A. Why, Jackson lived there for a while. He lives there now. And Alcohol Jim, he used to live there, what they called Alcohol Jim.

Q. And do you know the Gulicks?

A. Mr. Gulick—well acquainted with him, yes.

Q. Do you know his wife?

A. Yes.

Q. Did they live there in that vicinity anywheres?

A. Yes.

Q. Where did they live with reference to the channels back of that island?

A. Right back on the hill from the channel.

Q. Well, north of the channels, or south of the channels, or between the channels?

A. Between.

Q. Between the channels?

A. Yes.

1012 Q. Now, state to the Court whether or not, during the time that you have been there at work for Mr. Seufert, you have ever seen any other Indians except these that you have mentioned fishing on that point.

A. No.

Q. What do you say as to whether or not you would have seen them if they had been fishing there.

A. I would, yes.

Q. What do you say as to whether there were any Indians camped there except these who had their houses there, those that you have mentioned, with tepees or anything of that kind during that time?

A. No.

Q. What do you say as to whether you would have seen that if it had been there?

A. I would have.

Q. Now, there has been some testimony that up to about 15 or 20 years ago the Indians kept boats on both sides here, one on the Oregon shore and one on the Washington shore, Indian canoes or boats of some kind, for the purpose of crossing back and forth, and that in high water they would carry the canoes up on the shore and store them there, and at other stages of the water they would keep them in the water there. Now, what do you say about that?

A. No, sir. There was none. I never seen any.

Q. Now, what do you say as to whether that was or was reputed to be a fishing place for any Indians—north bank or otherwise?

A. No, sir.

Q. Now, where were the accustomed fishing places, the usual and accustomed fishing places of the Washington Indians, the north bank Indians?

A. That is across from Tenino.

Q. Across from Tenino. Will you indicate that point on the map, if you please, if you can.

A. It is right here (Pointing to map).

Q. And where else?

A. Celilo.

Q. Will you indicate that on the map?

A. There (Pointing to map).

Q. Now, what do you say as to the custom of the Indians as to Washington Indians crossing to the Oregon side to fish, or Oregon Indians crossing to the Washington side to fish?

A. I never seen it.

Q. Do you know what the talk was among the Indians as to where their respective rights were to fish?

A. Well, I never heard much of it because I never seen them cross over to fish, except one last fall; he come up the Tumwater to fish, and they would not let him fish.

Q. Was there any other instance of that kind that you knew of?

A. Well, there was one went over to Washington to fish a couple of years ago, and they would not let him fish.

Q. An Oregon Indian trying to fish on the Washington side?

A. Yes.

Q. Now, if there had been any general habit or custom for the Washington Indians to come over on the Oregon side, what do you say as to whether you would have known it or not?

A. I would have known it.

1014 Q. Now, what do you say as to the place there opposite Tenino, where the Indians fished, as to different stages of water at which they could fish there?

A. At any stage.

Q. Any stage?

A. Yes.

Q. What do you say as to whether or not that was an early place to fish?

A. Yes, it is.

Q. Now, just explain to the Court why they could fish there at any stage.

A. Because there is places in low water, and as the river rises there is channels, that they can fish in clear back to that city—Indian village.

Q. How many Indian dipping places were there over there at that point?

A. Well, I don't know exactly. I should judge 75 or 100.

Court: Are those channels on the Washington side of the main channel or on the Oregon side?

A. On the Washington side.

Q. On the Washington side?

A. Yes.

Q. Now, have you had occasion to observe, in your work there on the river, when a school of fish comes in, how long about it takes them to get from one point to another on the river?

A. Do you mean from the Three Mile Rapids up to Tenino?

Q. Well, at different points along there generally, have you noticed?

A. Of course the points is not all the same distance.

1015 Q. Well, I am not asking you about the distance now, but, I am asking you if you have had occasion to observe that, to notice it?

A. I should judge about two hours and a half or three hours from Three Miles Rapids to Tenino.

Q. And how far from Tenino—how long would it take from Tenino up to Celilo?

A. I should judge half a day.

Q. Now, I will ask you about this point down here. Has Mr. Seufert some wheels down here, down here from the back of the Big Eddy in front of what used to be the old Evans saltery?

A. Yes, he has.

Q. Now, from that point, when you begin to catch them at that point, how long is — before you begin to catch them up here—the Indians begin to catch them up here?

A. Maybe an hour or an hour and a half.

Court: Well, the channels down below are on this side of the main channel.

Mr. Bennett: How is that?

Court: These channels down below, where Mr. Seufert had his wheels, are on this side of the main channel, on the south side.

Mr. Bennett: They are not in the main channel, your Honor. They are in a side channel.

Court: Well, that is on the Oregon side.

Mr. Bennett: Yes. This up here is on the Washington side where the Indians fished.

Q. That is right, is it?

A. Yes.

1016 Q. Mr. Seufert's wheels there at that point are on the Oregon side?

A. Yes.

Q. And this place up where the Indians fished is on the Washington side?

A. Yes.

Q. Now, what do you say about that being a good place to fish up there?

A. It is.

Q. Where the Indians fished?

A. It is.

Court: That is admitted by both parties.

Mr. Bennett: Very well. I suppose it is also admitted that Celilo is a good place to fish, on the Washington shore?

Court: Yes.

Cross-examination.

Questions by Mr. Rankin:

— Mr. Wickman, you spoke of the time it took the fish to get from one point to another. I will ask you if you ever marked a fish, as Government fishers have done, and tested the time it took them to get from one point to another?

A. No, sir.

Q. Then what you have stated is your personal opinion from observation, is it?

A. By the run of the fish.

Q. Well, how did you observe it?

A. When we are catching them at one point it is only a little while till we start to catch them at the other.

Q. Well, now, answer my question. Is the data that you
1017 have given us your opinion from personal observation?

A. Yes.

Q. That is all. Now, do fish run at all stages of the water?

A. Well, yes.

Q. Are they running there now?

A. No, not now.

Q. Well that is one stage of water they are not running then, isn't it?

A. Yes.

Q. Now, answer my question—do they run at all stages of the water?

A. Well, not in the fall; but in the summer they do.

Q. That is another stage of water they don't run in, isn't it?

A. Yes.

Q. Is there any other stage of water the fish don't run in?

A. Not that I know of.

Q. When do fish start to run?

A. In the spring.

Q. How long do they continue to run?

A. In fall.

Q. And that ends it, doesn't it?

A. Yes.

Q. Then they don't run in either the late fall, the winter, or the early spring?

A. No.

Q. Do you know Peter Jackson?

A. Yes.

Q. Do you know Jake Andrews?

A. Yes.

Q. Did you used to know him before he died?

A. Yes, I used to know him.

1018 Q. Did you know Charley Switzler?

A. Yes.

Q. Did you see any of those men fish off that point?

A. No.

Q. You never saw them—you are positive of that?

A. Yes.

Q. Either by dip net or scow fish wheel?

A. By scows.

Q. You have seen them fish by scows?

A. Yes.

Q. Then there were some parties that you have seen fish there?

A. Yes.

Q. Indians. Where does Alcohol Jim live now?

A. Why, he lives there on the island, I think. I am not positive.

Q. Where does Jackson live—Jim Jackson?

A. Why, he used to live on the island, but he has moved. Well, he is at the lower end of the island.

Q. You spoke of a wheel that you used to work at where you could observe the point. Is that the old Phelps wheel?

A. Yes.

Q. That is owned by Mr. Seufert now, isn't it?

A. Yes.

Q. Will you kindly mark on this map where the Phelps wheel was? Mark "P."

A. It is right in here.

Q. Mark a "P" there, please,— "P W."

(Witness does so.)

Q. Mark it so you can see it, Mr. Wickman. You have "R. W." Mark it with "P W."

A. It is right there on that point.

1019 Mr. Bennett: Here are some pencils you can mark better with.

Mr. Rankin: All right, Judge. Here is a red one. Judge Bennett suggests you mark it with that. It will be probably clearer.

(Witness does so.)

Q. All right. How long did you work there?

A. Twenty years.

Q. All the time?

A. Well, practically all the time, yes.

Q. You didn't work there when the fish were not running, did you?

A. Yes.

Q. What did you do when the fish were not running?

A. I am working on the ranch around the cannery.

Q. What ranch?

A. Seufert's ranch, around the cannery.

Q. You were not working at the wheel then? You were working somewhere else on the ranch?

A. Yes, right on the river.

Q. How long would you be at that wheel, Mr. Wickman?

A. I was just there when it was in operation.

Q. How long would that be?

A. Oh, I would judge two months—three months—in the year. It would all depend on the water.

Q. How old are you?

A. Thirty-nine.

Q. Where were you raised?

A. At The Dalles.

Q. Born at The Dalles, were you?

A. Yes, sir.

1020 Q. You are one of the men who went down and put Sam Williams' scow off the point, are you not?

A. Yes.

Mr. Bennett: I don't think that is proper cross-examination, your Honor.

Mr. Rankin: It shows his interest, your Honor. It shows his activity.

Q. You have also been 20 years in the employ of Mr. Seufert?

A. Yes.

Q. Your interference with Sam Williams down there was at Mr. Seufert's suggestion, was it not?

A. Yes.

Q. At his orders, I should say?

A. Yes.

Excused.

1021 FRANCIS A. SEUFERT recalled for the defendant.

Direct examination.

Questions by Mr. Bennett:

— I am not sure, Mr. Seufert, but did I ask you when you were on the stand as to whether you had seen or whether there have ever been *and* Indian boats since you have been there kept on the different sides of the river opposite this point, any Indian canoes or boats of any kind.

A. No, sir. There has been nothing in that line kept there.

Q. What would you say as to whether you would have seen it if there had been anything of that kind?

A. I couldn't help see it, because I was right there in the orchard and at wheels along the river continuously.

Q. Were you in when Mr. Wickman was testifying about the location of one of your wheels down there in that vicinity?

A. I was.

Q. How far is that wheel from the point in question?

A. I should judge about 2,000 feet in an air line.

Q. Now, Mr. Seufert, I wish you would come down here and examine this map, keeping in view where the Covington Point is, and where your cannery is, and where the point is, and see whether the place where he located that wheel is the place where you would locate it. He located it where the letters "P. W." are.

A. Well, he got outside of that arm. It is right in here.

Q. You mark it where you think it is. Mark the first letter.

A. It is right in there. I will mark it "P. W."—Phelps wheel.

1022 Q. "P. W.", the same as he did?

A. Yes.

Q. Then mark an "S" after that, so we can tell your marking from the other.

Court: That is on the inside of that point instead of the outside.

A. Well, he got it wrong, on account there is a channel there—this channel comes through there and then runs down through there.

Court: Does that channel run through there at all stages of the water?

A. No, sir. It has to get up, oh, I should judge, 6 to 8 feet.

Court: You only operate your wheel, then, when the water comes up?

A. When the water passes through there.

Q. Now, what do you say as to that wheel being in sight of this point?

A. Yes, sir, plain sight of it.

Q. I believe you testified on your other examination as to the In-

dians who have lived there, and as to whether there were any Washington Indians fished there or not. I think you did when you were here several months ago, didn't you?

A. I think so.

Q. Well, then, I will ask you about that again. Now, Mr. Seufert, what kind of water can you operate a dip net in?

A. Well, it has to be fairly swift. The current has to be straight, in order to make it a good place, it wants to be at a place where the water is so swift that the water is white, kind of air bubbles.

Q. How is the water called by fishing men generally, when you speak of water that is good dipping water?

A. Oh, we generally call it swift water.

Q. Well, with reference to its color, is there any designation?

A. Well, we try to get it—at the best places, where the best dipping is done, it is whirls above it, and then the water comes along there, where it gets swift it gets white.

Q. Well, now, is there any designation among the fishermen up and down the river as to the kind of water, by color, that is good water for dip fishing, black water, or white water, or blue water?

A. What we generally term good water is in May and June, when the water is a little rilev, and the swiftness of the current and the bubbles, why, it kind of hides the fish from seeing the net.

Q. How close above the water—I am not talking about the bank—but how close above the water can you stand and dip net?

A. You mean right up and down?

Q. Yes, above where you are operating the dip net.

A. We usually stand about 3 feet the height of an ordinary table.

Q. How high could you stand above the water and operate a dip net successfully?

A. Oh, you couldn't stand over 4 or 5 feet and do it successfully.

1024 Q. Now, Mr. Seufert, I wish you would examine that picture and say whether you recognize it or not.

A. I do.

Q. What is it a picture of?

A. The south bank of the Columbia River at Three Mile Rapids.

Q. Before or since the blasting was done?

A. Since.

Q. Now, at what stage of the water, can you tell from the appearance there at what stage of the water that was taken?

A. That was taken about three feet to four feet above low water.

Q. How would you tell that?

A. This excavation that the Government did off here is five feet above low water, and the water is just breaking over it.

Court: That is to the left of the picture?

A. Yes, right off here. That is where the point came. They cut it off across there.

Q. Now, then, at that stage of water how high is that perpendicular bluff that shows on the picture along there above the water?

A. Oh, it is probably 22 and 23 or 24 feet; somewhere between 20 and 24 feet.

Q. Now, what does that white wall in the picture represent?

A. I had that built there for the men that were operating the scow there, to tie the scow to.

Q. Then that is the particular point in dispute, is it?

A. That is the point where Sam Williams attempted to put his scow in place of ours.

1025 Q. Now, Mr. Seufert, how far is that point from the place where the blasting meets the unblasted shore line on the lower side of that point and immediately out in front of where your crib stands?

A. From there where the last rock was broke off to here is 175 feet.

Q. Well, now, that won't appear on the record, Mr. Seufert; and I wish you would try to answer my question so it would appear on the record. How far would it be from the point where the blasting ended on the lower side of that island, so it will appear in the record. You know "here" and "there" would not show anything in the record. That is the idea.

A. From the point where the last rock broke off of the main ledge by the blast to the point—

Mr. Rankin: Suppose he marks it.

A. Oh, I couldn't mark it on the picture. From the point here where the last rock broke off by the blast to the point just below that dock is 175 feet by actual measurement.

Q. Now, how much farther along the shore line did that point extend out into the water before it was blasted off?

A. North?

Q. Well, I don't know whether it would be exactly north or not, but along the shore line there. I don't mean right straight back from the point, but along the shore line from the point that you have indicated here where the blasting ended, on out to the point along the shore line.

A. Well, I can give you—I measured it from the rock where it is blown off to out as far as the point approximately, we
1026 could get, it was about 250 feet.

Q. Then it would be something over 400 feet, as I understand you, from where your wall is located there, out to the point, along the shore out to the point as it was before any blasting was done?

A. Yes, probably 400 to 450 feet. You would have to follow this right around out.

Q. Now, I wish you would explain to the Court whether that was a place where the shore line at the low stage of the water, the character of the bluff would admit of dip net fishing.

A. Impossible.

Q. And why?

A. Well, you could not reach it. The dip net fishing is similar to a man shoveling hay with a fork. He could not shovel hay

with getting hold of the handle of the fork. He would have to get in and take power. It takes power to dip net fish. It is not child's play, to dip net. For that reason no old Indians, as a rule, dip net—mostly all done by strong healthy young men. It takes strength.

Q. Well, now, could a man dip there from the top of that bluff?

A. He could not.

Q. Now, there has been some talk about building platforms out. Now, when platforms are built, where are they built from with reference to the top of the bluff?

A. Well, they are not built from tops of bluffs. They are built along the edge of the water where you can get a place to lay
1027 out a 16 or 24 foot plank and stick it out far enough in the water so you can stand on the end of that plank and dip; then you weight it back here so that—and tie the plank to the shore with ropes, so there is no danger of getting pulled into the river when you get a salmon. You get a 40 or 50 pound salmon once in a while dip netting—it takes a good strong man to land him.

Q. What I want to get at is, Mr. Seufert, in putting those boards back there to put rocks on them, do they have to put the boards on the top of the bluff or not?

A. Why, I told you they don't have any bluff. They have to get where the rock is close to the water and get it back. They couldn't put it off a high bluff. You can't dip off a high bluff.

Q. Well, suppose the bluff was only four feet—suppose the square surface there, or nearly square, so they had to build a platform out, was four feet, where would they put the end of the board?

A. Why, on the rock, and weight them.

Q. On what part of the rock, on the top or on the sloping side?

A. Why, certainly on top; they couldn't put it on the side. They have to put it up here and let it stick over. Put a rock on there and hold it there.

Q. If they were going to try to build a scaffold on a bluff like that, where would they have to put the ends of the board?

A. They would have to put it out on top, stand on the end, then they could not reach the water.

Q. Now, Mr. Seufert, did I ask you yesterday about why—
1028 I don't think I did ask you. Now, what do you say as to whether that water, outside of the character of the bluff, is water suitable for dip netting at any of the lower stages of the water?

A. It is not; it is not.

Q. And why not?

A. Well, at low water—what we call low water—along the shore there probably out 10 or 15, 20 feet, is an eddy.

Q. Well, why couldn't you dip net at a place like that? Explain that to the Court.

A. You could not catch any fish. What would be the necessity of dip netting where you couldn't catch any fish?

Q. Of course, I mean dip netting successfully to catch fish.

A. You can't dip net in an eddy. The water is clear and the salmon would see your net there, come along. They would not go in the net for the pleasure of being in it.

Q. How would it be when the water got high?

A. Well, when it gets higher there that the river raises about 6 or 7 feet so it comes along there, why, then the water comes along there in whirls from that Three Mile Point.

Q. You are familiar with the water along there, are you?

A. Yes, sir.

Q. Now, what is the fact as to whether a place that is a good place, or where a scow wheel can be carried on, whether it is necessarily or probably a place for dip net fishing?

A. Well, we have quite a few scows running. I think we have 7 or 8, and not one of them is in a place where they ever dip net.

Q. Well, I would like to get a square answer to whether or
1029 not the water—it requires the same kind of a place to dip net that it does for a scow wheel.

A. No, it does not.

Mr. Bennett: I would like to offer that picture in evidence, your Honor.

Court: I suppose there is no objection.

Mr. Rankin: I would like to ask a question or two.

Cross-examination.

Questions by Mr. Rankin:

— Where was this picture taken from, Mr. Seufert?

A. I have not any idea, but I suppose it was taken from the Washington side.

Q. About how far distant from the wall and bank?

A. Across the river there?

Q. Yes.

A. Oh, I should judge at this stage of the river it is 500 feet—600.

Q. Who took the picture, do you know?

A. No, I do not. It was either my son or some amateur.

Q. It has "welcome" on the bottom of it.

Mr. Rankin: No objection.

Marked "Defendant's Exhibit H."

Direct examination resumed.

Q. There was some testimony of Mr. Jensen as to the place where their ferry boat was laid up in the winter time, and I wish you would locate that place as near as you can. You know where the boats were laid up there, do you?

A. It is what they call Hungry Harbor. I think that is what it is commonly known as around there.

1030 Q. You need not locate it on the map, but about how far is that from The Dalles, and how far from the point in question?

A. Oh, I should judge it is a little better than a mile—probably a mile and a quarter from The Dalles, and probably three-quarters of a mile from the point. I think it is right in there (pointing to map).

Q. Now, ordinarily and generally, Mr. Seufert, at about what stage of water do the salmon begin to run?

A. Well, in early seasons, what we call early seasons, where we have spring the latter part of February, breaking in through March, we generally catch a few the last week of March, very few.

A. Well, I am asking you ordinarily and generally, on an average.

A. We rarely catch any after the 10th or 15th of October.

Q. What say?

A. And rarely catch any after the 10th or 15th of October; that is about what we call the fishing season.

Q. How high is the water on an average? Of course, I suppose it is not the same every year, but take it generally—about how high is the water when the fish begin to run?

A. Well, sometimes in March it is probably 3 or 4, 5 or 6 feet above low water; sometimes a little more, sometimes a little less. You can't tell. That depends entirely on the season. Ordinarily when we catch fish commercially, why, the season opens, the water is generally from 5 to 8 feet high at that time.

Q. When is the low season of water in the Columbia River ordinarily?

1031 A. Well, some years it occurs in November. If it is a very dry fall, why, we have very low water in November. Then again in the winter time, when we have weather similar to this, when it gets very cold, why, the river gets practically far below, sometimes, low water of the Government's gauge.

Q. And when does the water ordinarily begin to raise, what season of the year, on an average?

A. Well, it usually starts in about the last of February or forepart of March.

Q. Now, Mr. Seufert, you heard the testimony of Indian Spencer?

A. Yes, sir.

Q. Are you acquainted with Spencer?

A. Oh, I know him for quite a few years.

Q. He testified to having some arrangement with you about fishing and about your breaking it off. Now, what was that whole thing?

A. Well, he came there last spring, I think it was along about the fore part of April, and he asked me if I would give him a scow to run, like I had some of the other Indians. And I told him I probably might give him a scow; I would see what I had that was not taken, and if there was anything I would gladly give it to him. And he went down on this island, and finally his son came there. It was not but a few days after his son came there before he was down town drunk. Finally I found out that Mr. Spencer was doing the same thing. So finally he came up and wanted to know if he could get a scow; and I told him they were all took excepting

that I thought probably if he located down there with Peter Jackson, him and Pete might go together in partnership. My
1032 idea was if one could not drink all the whisky, the other fellow could help him out. For that reason I didn't have anything to do with him.

Q. Well, what was the reason? Well, I believe you have stated that, though. Now, Spencer also testified that you had some talk with him about Bill Charley and told him that Bill Charley was a good man but that he was not doing right. Now, just state how that was.

A. I don't know whether I would just state it in that kind of way; but he asked me about Bill Charley. I told him that since his two sons had died I had had quite a little annoyance with Bill Charley—that he was not straight. We agreed to give him five cents for his fish, and he agreed to divide that fish in two, giving the widows, who were practically owners of the scow, half. And he would take all the good fish and take them off and sell them, and pick out the little ones that we practically only pay a cent a pound for and then don't want them—bring them to us. And I told Bill Charley if that was the way he wanted to do business we would rather not have anything to do with him. And then Mr. Carr came down last spring—

Q. Who?

A. Mr. Carr, the agent of Yakima, came down and asked me if I would try to help him get something for those widows out of those two fish wheels. And I told him I would be very glad to do it if he could take Bill Charley to the man on the Washington side who attends to our business over there, weighs the fish, will give Bill
1033 Crarley two books. When he brought one hundred pounds of fish, he would put Bill Charley's fifty and then the two widows' fifty, and I would hold the fifty pounds for the widows and pay Bill Charley, when he called for his money, the fifty. And Bill Charley agreed to do that, but he never brought one fish during the entire summer season.

Q. Now, Bill Charley himself testifies that you blasted a channel between one of his wheels and the shore, and cut him off from his wheel so that he could not get out there. Now, what are the facts about that?

A. That is not so, because we have a walk right back of the wheel, put in there with railroad iron, laid across that channel. I don't know exactly the width of it, but I should judge about five feet wide walk over that channel.

Q. Was he deprived of the use of that walk at all in any way?

A. No. Nobody.

Q. Do you know whether he did use it or not?

A. It is very seldom that I get to that point. It is on the Washington side just above the Big Eddy, and the consequence is I seldom get there myself. I could not tell whether he went across or not.

Q. You couldn't tell whether he used it or not?

A. It don't look reasonable that he didn't when he went out there to attend to his scow.

Q. Anyway, he could if he wanted to?

A. Yes, sir.

Q. How was that as to being convenient to his scows?

A. Oh, it was probably 50 or 60 feet from his scow.

Q. That extended clear across the channel, did it?

A. Yes.

Q. Now, he has testified that you told him at one time that he didn't have any business around there.

1034 A. I did.

Q. Was that with reference to this point?

A. No, sir.

Q. Where was that?

A. Two years ago, after his two sons died that operated these two scows, he immediately took charge of it as the chief over them. And my man phoned over one day that Bill Charley was running his scow right below one of our wheels. We have a mark up there, complying with the Washington law, the distance.

Q. How much is that distance up and down the stream? —

A. 900 feet.

Q. Well, go on.

A. So I went over there with the boat, and he was right in probably within 250 feet of our wheel. Our wheel had not started to run yet. The water was just coming in then. I told him, "Now," I says, "I want you to keep out of there and stay out of it. I don't want to get in any conflict with these laws of fishing. You have no business in there." And he said that he would go just where he pleased.

Q. Was that one of the Winans wheels?

A. It was a wheel that Winans at one time owned.

Q. That was one of the wheels that you were operating by virtue of the decree in the Winans case, was it?

A. Yes.

Q. When did Sam Williams first come up anywhere about this point, Mr. Seufert?

A. Three Mile Point?

Q. Yes.

A. Oh, I think the first, really the time that he commenced
1035 to come in and out of there regularly was about the time the Government started to blast there. The Government work started about 1905.

Q. Now, did he ever dip net on this point?

A. Not to my knowledge.

Q. When he was fishing with a net, whereabouts did he fish with reference to this place where your wheel is that you have indicated in the picture?

A. I never knew him to fish there with a net of any kind.

Q. What say?

A. I never knew him to fish there with a net of any kind.

Q. I am not talking about a dip net now. I am talking about a gill net.

A. Well, I never knew him to fish with a dip net or gill net at that point.

Q. Anywheres about the river there?

A. Oh, he had a gill net, I think 1908, for a short time up in front of Mr. Gulick's place.

Q. How far was that above this point?

A. Oh, it was just right around the upper side of the point.

Q. Now, there has been some testimony, Mr. Seufert, about fencing, and about your having some 20 years ago fenced this point off so that the Indians could not get in there.

A. That is not true, because I have not owned it that long.

Q. When did you own it?

A. Oh, I would have to look that up.

Q. Well, can you tell about, without looking it up, do you suppose?

A. I think we bought that two lots of Humason about 1900 or 1901.

1036 Q. When did you buy the balance of it?

A. Oh, I bought that, it seems to me, about 1905-6-7—along in there.

Q. At that time had it been fenced?

A. No, sir.

Q. Had there been anything before that time to prevent Indians going there and fishing if they wanted to?

A. No, sir.

Q. How was it fenced in the first place?

A. After I owned it we allowed it to lay just as it was. And the Indians used to camp around down at Three Mile, at the mouth of Three Mile Creek on the slough and back on Three Mile there. When they were going to Hood River to pick berries, and when they returned there again, a good deal. And we had a great deal of trouble there with cayuses getting killed on the railroad track. And the engineers and trainmen coming into the cannery getting across in and out often spoke to me about it, if there could not be something done to stop that, that it was a regular menace to them. So I took it up with the O. R. & N. Company, and asked them to fence their track from our orchard to Three Mile Creek; and if they would do that, I would put in a short piece of fence across the balance of that land to a bluff, which would close up the west end and stop that menace. And the company said yes, they would gladly do that; and did do it. I think that was 1907.

Q. That was when?

A. 1907.

Q. 1907?

A. Yes, sir.

Q. Had it ever been fenced before that time?

A. No, sir; never was a fence there of any description.

1037 Q. Now, when people were traveling from the cannery and above the cannery down towards The Dalles, either Indians or white men, where did they travel with reference to the rocks or the road?

A. Oh, they traveled the county road.

Q. Did any of them ever go across the rocks between the road and the river?

A. I don't think so. That is a very rough country through there.

Q. Now, there has been some testimony of Mr. Gulick about she and Wasco Charley, along during the years that Wasco Charley was living there, getting fish heads from the cannery. What were the facts about that?

A. Oh, they always came and got what they wanted.

Q. Well, could you give the Court some idea of how much they packed away from the cannery of that sort of stuff, year by year?

A. That would be a pretty hard proposition, to tell how much they packed away. Tons and tons of that stuff produced during the year, and at times the Indians come and take it all. Other times there is so much that the Indians can't take it all, and we bury it around the orchard. We bury all the offal around the orchard. We don't run that into the river. For that reason we raise fruit on that sand; otherwise we could not do it.

Q. I would like to have you state as near as you can how many these particular Indians, Wasco Charley and Mrs. Gulick, estimate it as near as you can, Wasco Charley and Mrs. Gulick take each year from that cannery.

A. That would be mere guess-work. They probably took tons of it during the year. Wasco Charley never took a great deal
1038 because Wasco Charley never was a horse Indian, riding horses. I never saw him on a horse in my life. What little he took he used to pack down unless some of the Indians would haul it for him, some of his friends.

Q. About how long had that been going on as far as Wasco Charley and Mrs. Gulick are concerned, how many years back?

A. Ever since the cannery has been in operation.

Q. Something was said about white fish. What about that?

A. Well, at times we get white salmon. We don't get enough of them to make a special run on them. It doesn't pay to change from a regular run of fish—probably get three or four or a dozen fish a day of that kind. The last of August they are snow white and being a very low grade of fish. And rather than bother putting them up—there is nothing so far as profit is concerned to us, in putting them up,—we throw them out, and if those Indians are along there at that time we give it to them, whoever it is—sometimes Mrs. Gulick, sometimes Wasco Charley, and sometimes other Indians, whoever is handy there, and they want those white fish we give it to him. An Indian prefers a white salmon to a red salmon.

Q. I am asking particularly about Wasco Charley and Mrs. Gulick. It doesn't matter about the other Indians. To what extent did they get that kind of fish there during all the years since the cannery was built?

A. Wasco Charley practically got his salt fish that way in the fall, for the winter. He got too old in later years to do any fishing himself.

Q. Well, all right. She said that she paid you 25 cents a box for them. How about that?

1039 A. Never paid me a cent in her life, or any other Indian, for salmon heads.

Q. What say?

A. She never paid me a cent in her life, or any other Indian, for salmon heads.

Q. Well, now, is there anything more in relation to that that you wish to explain to the Court?

A. Well, sometimes we only have possibly a half ton of fish, or a ton of fish. The Chinamen who cut the heads and tails off the fish at those times—probably some Warm Spring Indians come in there and they don't have long to stay—they stop a day, maybe two. They want to get some heads to salt; they will give the Chinaman 25 cents a box to save the heads for them. And the Chinamen do that, and they make that extra. We have nothing to do with that whatever.

Q. Do you ever get any of that at all?

A. No, sir. And then when we have five or six, seven or eight, ten ton- of fish, why, as a rule there is heads for all of them, and it is rarely ever when we have so many that they take all of them. They take the best of the heads, and the small ones, the little size, also.

Q. Well, then, do they pay this Chinaman 25 cents a box when they have plenty like that?

A. No; the Indians are sharp as anybody. When the market is overstocked they take the overstock without paying for it.

Q. Now, something has been said in the testimony about the Gulick wheel. What was the arrangement with you and Mr. Gulick about that wheel?

A. The wheel was built by Mr. Gulick and a man by the name of Charley Hall.

1040 Q. Was he a white man or an Indian?

A. They were both white men. Mr. Hall's lower limbs were paralyzed, and he could not attend to it any more, and he didn't have any money either, and he wanted to sell his interest. And they came up, and I wanted to advance money for Mr. Gulick to buy Mr. Hall's interest, and he didn't want to. He said it was not a very good paying institution. He didn't want it at any price. So we finally agreed, and I think if I recollect right it was \$800.00 that I gave Mr. Hall, cash, for his half interest in the wheel. And Mr. Gulick ran it after that, and whenever he needed any help he would phone up to the cannery—we put a telephone in there. If he wanted any help to fix the wheel, why, we would send some of our men down there to do it. And he took the fish, brought them up to the cannery, and we allowed him five cents a pound for the fish. Then we split the five cents in two—that is, if he caught five hundred dollars worth of fish he would get two hundred and fifty and we would get two hundred and fifty. Out of our \$250.00 we would allow him \$65.00 as a rental for his wife's property, which he said he had to pay to his wife. And in that settlement every year, he took out the \$65.00 regardless as to what there was.

Q. Now, there has been some testimony on the part of Lawyer that you went over there on the island one time and told him that he had to sell his fish to you or that he could not fish there.

A. It is not true. I never was on that island in my life.

Q. Well, did you ever make any such a statement as that to him anywhere?

1041 A. No.

Q. Now, he said that he had to sell his fish to you for a cent a pound. What, if any, kind of fish did you buy at one cent a pound?

A. That is all we pay for that class of fish any year. A great many years we don't take them at all. A number of years we don't take them at all.

Q. What kind of fish are those?

A. They are mostly white salmon, large Chinook and steelheads and mostly they are hooked or speared, and we don't like to take them at any price. They are a lot of bother in cleaning them. We have to clean them wherever they have been hooked or been speared, we have to cut a piece right out of the fish and throw it away, because that is blood-shot.

Q. When you pay for those fish do you pay for just the good part of the fish, or the entrails and the heads and everything?

A. We take them as they catch them. We can't stop and make a price for allowance, because we would not have nothing but trouble all the time.

Q. Now, was there any profit in this kind of fish even at a cent a pound?

A. Sometimes a pretty fair profit. Other years there was practically no profit—the price was low and we didn't care about taking them.

Q. What did you get for them after you had canned them and done the work and furnished the cans and the labels and everything—what did you get for that kind of fish?

A. Oh, the price of that kind of fish generally runs between 60 cents and 90 cents a dozen.

Q. 60 cents and 90 cents a dozen?

1042 A. Yes.

Court: That is a dozen cans?

A. Yes, sir; a dozen pound cans.

Q. And of what you bought you took the heads and the entrails and everything of that kind. I suppose you couldn't can the heads and the entrails?

A. Oh, we buy the round fish, everything that comes.

Q. And you furnish the cans?

A. Oh, sure.

Q. The labels, and put them up?

A. It costs just as much money to put up a poor fish as it does to put up a good fish.

Court: Mr. Seufert, I forgot to ask you a moment ago—how many men does it require to take care of the wheels, to tend them while the fish is running?

A. Oh, we usually have a day man and a night man for each wheel. But then if the wheel catches any amount of fish so one man cannot handle it good in the day time, why, we send extra men there to help them take the fish out. But we have one man as a rule, steady, unless it is at high water, after the drift and everything stops, that we don't watch them nights.

Q. Now, Mr. Seufert, I wish you would show the Court on the map, as near as you can, the exact place where Wasco Charley used to dip net.

A. Oh, it is not so easy to show those things on a small map. I could show it on the ground easy, because there is an iron pin right there where he fishes. It is practically right about here on this map.

Q. Now, how is that with reference to what somebody has
1043 marked "K" there, and another letter. I don't know what that other letter is.

Mr. Rankin: "I."

Mr. Bennett: Yes, "I" and "K" there.

A. It is about the same place.

Q. Which letter?

A. Well, that is right in the vicinity there. I could not tell by that map just exactly where the spot is. That would be impossible. That dip stand is caused in this way. This water comes down here and strikes this bluff. When it strikes here it breaks in the center. Part of the water goes through this eddy and goes back up again and comes into the river again. The other part goes on here straight for a little distance until it starts to curve. Right here on this divide, where this water divides, why, there you can dip at certain stages of the water. That is what makes it. Mrs. Gulick identified that place exactly. She said there was an iron pin there. There is where they tie the rope to hold the net.

Court: Who put the iron pin there?

A. The Indians.

Q. Now, did Wasco Charley ever dip on the lower side of that point?

A. Not to my knowledge.

Q. Around the point, how far was it from where your wall is there around the point as it was originally before it was blown off, to where Wasco Charley dip netted?

A. Oh probably one thousand or eleven hundred feet.

1044 Q. Now, where was Peter Jackson's wheel?

A. 75 feet exactly from the place where Wasco Charley dips down stream.

Q. Down stream?

A. Yes.

Q. Now, there has been some testimony here, some of the Indians have testified that they did not know boundaries. From your knowledge of the Indians, your experience with them up there on the river what do you say as to whether they knew boundaries or not, and lines?

A. They generally knew mine better than I knew myself.

Q. Well, can you say generally what is the fact about whether they knew boundaries or not?

A. Oh, yes. I don't think an Indian is very badly fooled on boundaries. He can describe boundaries pretty carefully if he wants to.

Q. Some of these Indians here who testified would not talk in English. Indian Tommy for instance—do you know whether Tommy could talk good English or not?

A. I never talked anything else to him in my life.

Q. What do you say as to whether he talks good English or not?

A. He talks fair English.

Q. Have you any trouble in understanding him or making him understand you?

A. Oh, not a great deal. Of course, we don't talk high class English, but we always manage to understand one another.

Q. Do you know where the gauge kept by Mr. Whitcomb, and which he described here, Government gauge, was located, Mr. Seufert?

A. I do.

Q. Where was it.

1045 A. It was right below the house about northwest from Mr. Whitcomb's house, right at the river bank.

Q. From whose house?

A. Mr. Whitcomb's house.

Q. Locate it on the map there. I don't care by lettering, but just indicate to the Court.

A. It was right here at this high bluff. It was a kind of bight comes in here.

Q. How did the gauge there correspond with the gauge at The Dalles?

A. Oh, I suppose probably a foot and a half raise there to a foot at The Dalles, and some stages of water possibly nearly two feet.

Q. When it was ten feet at The Dalles above low water, what would it be up there?

A. Oh, fifteen or sixteen feet, if not more.

Q. Now, there has been some talk about some Indians who lived on that island being allottees of the Yakima Reservation. Jake Andrews, and Switzer, Peter Jackson, and perhaps some others.

A. Jake Andrews?

Q. Yes. Now, were those Indians recognized by the Indians and whites along there as being Yakima Indians?

Mr. Rankin: Objected to as being immaterial and incompetent. It doesn't make any difference what they recognize them as.

Court: There is some question as to whether they were Yakima Indians. I will hear the testimony.

A. We always knew Jake Andrews and his brother Shudo—there were two of them at one time—Shudo was killed by the
1046 O. R. & N. Company on the track—as Indians belonging to the Cascades, and their father and mother lived down there.

Q. Well, now, about these other ones?

A. And Peter Jackson, we never knew him as a Yakima Indian, for his father was a Wasco Indian. Jim Jackson testified here the other day, and his mother's name was Lucy, and she was a Hood River Indian. She worked for me for years.

Q. I am not asking you so much about the fact, Mr. Seufert, now, as about what was the general understanding and talk about that matter. How were they classed by the white people and Indians there?

A. We classed them as Oregon Indians, Warm Spring Indians. And those that lived on the north side of the river we called Yakima Indians.

Q. Well, now, now was it about Peter Jackson and Switzler?

A. Oh, they were all Wasco Indians, and they never were referred to any other way than as Warm Springs or Wasco Indians.

Q. Do you know anything about what Indians had been given allotments on the reservation?

A. Oh, I didn't know anything particular only what they would come and tell me. Peter Jackson told me one time that he had made application over there for allotment, and never heard anything from it.

Q. On which side of the river did those Indians always live?

A. He always lived right there at our place—born there.

Q. Now, there has been some testimony, Mr. Seufert, that the Indians would all commence down the river to fish about this
1047 point, and that then when the fishing was over there they would all go up to another point, and so on, on up the river.

Was that ever the practice among the Indians?

A. Not to my knowledge.

Q. Well, if there had been any practice of that kind, state whether you would have known it or not?

A. I could not help notice it, because I think possibly the first 20 years of my experience there that I rarely ever missed a day or left the place.

Q. I believe I asked you if you had dip netted before you put in the wheels, before you commenced the wheel fishing yourself?

A. I did.

Q. There is some testimony by an Indian witness by the name of Bruno about his brother having a wheel one time somewhere in the vicinity of this point.

A. His brother never really owned the wheel. He had a wheel there that he was running with Jake Andrews, his father-in-law. Jake Andrews, after he left his first wife, who was a daughter of Bill Charley's, married the daughter of Cain Bruno.

Q. Daughter of what?

A. Cain Bruno, this Jerry Bruno's eldest brother's daughter. And then he lived there with her at the cannery, and finally they had some family troubles.

Mr. Rankin: I object to the witness going into all this history. It is taking up time of the Court with what is neither profitable nor useful.

1048 Mr. Bennett: I agree to that, your Honor.
Court: Very well.

Q. Just confine yourself to what his relation was to that wheel.

A. Why, his relation was nothing to the wheel, only he worked for Jake Andrews, and he tried to beat Jake Andrews out of it and claim it.

Mr. Rankin: Objected to. I move the answer be stricken out as incompetent and not bearing on the case.

Q. How long did he have anything to do with that wheel at all there?

A. One season.

Q. Where was that wheel located with reference to this point?

A. It was first located on the Washington side, and it broke away from there and went down through the rapids.

Q. Was it ever located about this point?

A. They caught it below the rapids, tied it up a while on the Oregon side, and they they tried it up at that point for a while.

Q. How long?

A. Oh, I should judge—I don't know exactly—two or three weeks.

Q. Now, when you say at that point, where do you mean? Was that before the point was blasted off?

A. Three Mile Point. I don't know exactly just the spot where it was, but it was down there at that point. That was before it was blasted off.

Q. There is some testimony about a wheel called the Davis wheel. What about that?

A. There was a man there, Davis, had a wheel there along
1049 the latter part of the 80's. That was on the Washington side right opposite our cannery, where we have a wheel now.

Q. Was that ever on the Oregon side?

A. No, sir.

Q. What has been the habit and custom of the Indians since you have been there as to selling fish?

A. Oh, they always sold them when they could get anybody to buy them.

Q. There is testimony of one witness here that when a man was fishing and would catch fish, he would let the other Indians take them until they had taken a certain amount, and then that he would slap his leg and stop the proceeding. Did you ever know of one Indian that was catching fish letting another one take them unless he paid for them?

A. I never saw one slap his leg in my life.

Q. What say?

A. I never saw one slap his leg in my life.

Q. What do you say as to when they were fishing letting another Indian take their fish without paying for them?

A. I don't think that they ever do any such thing as that, because they will either make the other Indian pay for them or bring some stuff in trade.

Q. You know where Sam Williams' present homestead is, do you?

A. Yes, sir.

Q. Which side of the river is it on, the Oregon or the Washington side?

A. Oregon side.

Q. Below or above this point in dispute?

A. Below.

Q. How far below?

1050 A. Oh, it must be a mile. I think there are four 40's in there.

Q. Do you know where his wall and wheel is?

A. Oh, I have seen it there in the river. I don't know exactly where it is.

Q. What do you say as to whether his wheel is in front of his land or not?

A. Well, I couldn't say exactly, because I don't know just exactly the west corner of his land. But it is right in that vicinity.

Q. All right, if you don't know. Now, either Mr. Whitcomb or Mr. Johnson—I am not sure which—testified as though these whirlpools along in the river here were stationary so that you could dodge them with a boat and avoid them. What are the facts as to whether these whirlpools were stationary or shifting?

A. I never saw one stationary. I generally got out of the way of them. Whirlpools come and they break. You don't know when they are coming, only by the gradual getting used to the way the water acts, and you can judge that one is coming pretty close to you, and you generally get out of the way of them.

Q. What do you say as to whether they move with the current or not?

A. Surely they move down stream with the current. It is a rotary motion of the current that produces them.

Q. Mr. Seufert, it was the testimony, I think, of Mr. Lancaster Spencer that there was an Indian village in here somewhere below the Big Eddy.

A. I never saw one there.

1051 Q. Was there ever any Indian village in there that you know anything about?

A. No. I never saw an Indian camp there.

Q. He also located, at another time in his testimony, as being close to where one of your cables crosses the river, where you had a trolley. Now, where is that trolley located?

A. I don't know whether I could get it exactly on that map.

Q. Take and make a line right across. Now, make a line right across the river at that place where your trolley runs across—a red line.

A. It runs across about in that way.

Q. Can you make it a little plainer than that where it crosses the river?

(Witness marks on map.)

Q. Now, have you any other cable anywheres in that part of the river, or between Wish-ham village and the point in dispute?

A. No, sir.

Q. Now, when you went there, were there any Indian houses or anything of that kind in that vicinity?

A. Near that cable?

Q. Yes, near where the cable was.

A. On the Washington side, yes, there is some.

Q. Now, make a little circle with that red pencil above where those Indian huts were located.

A. The slough breaks in there somewhere, back in here along somewhere.

Q. Make a little circle with red pencil, as near as you can locate it.

1052 A. They were back here on this high ground.

Q. About how far was it from your trolley station to there?

A. I should judge hardly a quarter of a mile.

Q. How many Indian houses were there there?

A. Oh, probably three or four that came there in the summer time. There was nothing permanent there. In the summer time and in spring they would come there and put up these three or four or five or six of those little shanties, and then there was one wooden shanty there that was there all the time.

Q. Well, now, was there anything of that sort, or any sign of any Indian village from that point on down the river?

A. No, that was the lowest down.

Q. Now, Mr. Seufert, what do you say as to whether fishing with a fish wheel can be exercised in common?

A. I don't think so.

Q. What say?

A. No, sir.

Q. Why not?

A. Well, a stationary wheel is very expensive to put there, and when a man once gets his wheel there, another man couldn't very well put one there.

Q. Would it be practicable to fish one wheel one day and another wheel another day?

A. Oh, no. It takes a full week anyway.

Q. What say?

A. It takes practically a full week for a gang of men to secure a wheel in its place.

Q. Now, is it practicable, to dip at a point where a wheel is located?

1053 A. No, we don't as a rule choose a place where they are dipping. We try to get a swift wild current for a wheel.

Q. Is this a picture of the fishing ground at Celilo?

A. This is the Washington side of Celilo.

Mr. Bennett: We offer that in evidence, your Honor.

Marked "Defendant's Exhibit I."

Court: Mr. Seufert, what are those piers running across there?

A. That is the Oregon Trunk, I think they call it, going up the Deschutes, and it connects with the S. P. & S.

Court: There is where the bridge is located?

A. Yes, sir. It is the same picture as the last picture, only taken from the Washington side.

Mr. Rankin: Objected to as incompetent, irrelevant, and immaterial, having nothing to do with any of the issues involved in the present case. It hasn't been identified any further than the witness recognizes it, but doesn't show what it is for.

Court: I will overrule the objection.

Q. What is that picture, Mr. Seufert?

A. It is the head of Five Mile and top one of our wheels behind that rock.

Q. What is this?

A. That is the falls of Five Mile Creek right below the railway bridge.

Q. How far is that from the mouth?

A. Oh, ten or eleven hundred feet.

Mr. Bennett: We offer that in evidence.

1054 Mr. Rankin: Objected to as incompetent, irrelevant, and immaterial, having nothing to do with any of the issues in this case.

A. The railroad bridge runs right over the falls.

Mr. Bennett: It goes to the point of Indian Tommy's story about his getting back and forth up there.

Mr. Rankin: We interpose the same objection on the same grounds.

Court: Objection overruled.

Marked "Defendant's Exhibit J."

Q. I wish you would identify what that point is, just simply so I will know whether it is important in this case or not.

A. That is Five Mile Rapids, taken up stream.

Q. Then I won't introduce that. What is that?

A. That is Three Mile Point.

Q. Before or after the blasting?

A. That was after the blasting.

Q. That is as it is now, then?

A. That was taken last week during the snow.

Q. At what stage of water?

A. That was low water, but the ice is piled up higher than there now. You see the ice keeps raising up there.

Mr. Bennett: We offer that in evidence.

Marked "Defendant's Exhibit K."

Court: Is this the point here?

A. Yes, the point is out in here. This is the upper side. You see the ice is all banked in there, and raised up probably ten or fifteen higher now.

Q. What does that show, Mr. Seufert?

A. That looks like——

Q. You don't recognize it?

1055 A. Yes, I think that is Five Mile shoot through there.

Q. Very well. We will not go into that then. What is that?

A. That is Five Mile shoot taken up from the head right through. That is Wish-ham over there, the rocks.

Q. What is this? Is this anywheres in relation to between the cannery and Three Mile?

A. That is right at the mouth. The mouth of the creek comes right out here.

Mr. Bennett: We offer that in evidence.

A. That is the west side of the creek. That is the east side.

Q. That is Five Mile Creek, by your cannery?

A. Yes, sir. The canal enters right here.

Mr. Rankin: Objected to on the same ground.

Court: Objection overruled.

Marked "Defendant's Exhibit L."

Q. What is that?

A. That is the east side of Five Mile, comes right out here.

Q. Five Mile?

A. Five Mile Creek.

Q. Oh, the east side of Five Mile Creek?

A. Yes, sir. That scow runs right just about the mouth of the creek.

Mr. Rankin: It is understood we have exceptions, your Honor, to all these rulings?

Court: Very well.

A. That boat is coming across the river.

Mr. Bennett: We offer that in evidence.

Q. Do you know what stage of the water that was taken at?

A. That is not very high water.

1056 Mr. Rankin: Objected to for the same reason, your Honor. It appears to be a postal, without any identification as to who made it.

Objection overruled. Exception allowed.

Marked "Defendant's Exhibit M."

Q. I wish you would look at Exhibit L and mark the mouth of Five Mile with a cross on that.

(Witness does so.)

Recess until 2 P. M.

Mr. Bennett: We have one other map we desire to offer in evi-

dence because it shows the channel back of this point in dispute better than any other of the maps.

Court: Is that a Government map?

A. It is another Government map, your Honor.

Mr. Galloway: A little earlier survey—1874.

Marked "Defendant's Exhibit N."

Q. Now, what do you say as to the correctness of this map, Mr. Seufert?

A. That appears to be correct as the land lays there.

Q. Now, does this map show the channel back of Three Mile?

A. It shows the inside channel as along there, the outside channel coming through here.

Q. Now, will you mark with a "G" on that the place where Mr. Gulick's house is?

A. His residence?

Q. Yes, his residence; where Mr. Gulick's residence is.

A. It is right on this point.

Court: Mark it "G."

(Witness does so.)

1057 Examination by the Court:

Q. Is the whole of that island submerged when the water is higher?

A. No, sir.

Q. It is only this part here in front?

A. It is this part in here that is submerged in stages of water; stages about 23 or 24 feet at The Dalles submerges this point.

Q. But that is not the part where the house is?

A. No. Where the house is is never submerged.

Q. Now, Mr. Seufert, from your observation on the river, how long is it from the time a run of fish left here at Three Mile Rapids, or at the Big Eddy, until they are up to the head of the narrows opposite Tenino and Wish-ham, till you catch them up there?

A. Well, usually when we get them at the Phelps wheel in the morning, the boys report fish there, along in the afternoon, towards evening, they commence to come in at Tenino.

Q. And how long will it be from the time they begin to catch them down here by the Big Eddy before they get to Celilo?

A. Oh, 36 hours to 48.

Q. Now, what do you say as to whether there is or could be any considerable difference in the earliness of fishing between this point and the points up the river at the head of Five Mile Rapids and at Celilo?

A. Oh, we have never considered it so. When fish run, they run practically all over that section within a day or two.

1058 Cross-examination.

Questions by Mr. Rankin:

— Mr. Seufert, I believe you stated that you came to The Dalles about 1880?

A. Yes, sir.

Q. For some little time after that you were engaged in the grocery business there?

A. Shipping business.

Q. Shipping what?

A. Oh, fish—fruits.

Q. Now, prior to 1880, your testimony concerning bridges and conditions of the country there, the habits and customs of Indians, is based upon rumor, is it not?

A. I don't know anything about prior to 1880 any more than what I have heard the old-timers say along there.

Mr. Rankin: You have a picture here of dip net fishing. Could I see that?

Q. Where was that picture taken? (Defendant's Exhibit C.)

A. That picture, I suppose it was taken on the Oregon side of the island just below Mr. Taffe's.

Q. What part of the Columbia River?

A. Oregon side.

Q. What part? Whereabouts? Is this Celilo or below Celilo, or where?

A. Celilo. Just at the falls.

Q. Is this long pier running out there, is that the same Oregon Trunk line that you spoke of?

A. No, that Oregon Trunk line does not come anywhere near that.

1059 Q. What is that?

A. Those piers there?

Q. Yes.

A. That was a lead that Mr. Taffe one time constructed from his wheel up here out there to the break of the falls.

Q. You don't know what Indians those are there?

A. No, I don't; don't even know who took the picture.

Q. I believe you testified that Indians dip between the mouth of the canal and Five Mile Rapids on the Oregon side. That is correct, is it?

A. That they dip between the mouth of the canal—

Q. And Five Mile Rapids, on the Oregon side.

A. I don't think I ever testified to any dipping in the canal.

Q. They never dip there, you say?

A. The canal has only had water in for the last two years. I am quite sure no Indian ever dipped in the canal.

Q. I say, dip between the mouth of the canal and Five Mile Rapids.

A. No, they never dip there.

Q. No dipping places there?

A. No.

Q. You are familiar with the run of the salmon up the Columbia River, are you?

A. Oh, I have had a number of years of experience in catching them, preparing for them.

Q. Where do they come from?

A. Well, they come from the Pacific Ocean, but where I don't know.

Q. They come from the Pacific Ocean and run up the stream?

A. Run up the Columbia River.

1060 Q. And their run is always up river, is it?

A. Yes, sir.

Q. At the time of catching fish. Now, when did Charley Switzler first fish at this point in question, at the head of Three Mile Rapids?

A. When he first fished there?

Q. Yes.

A. For us?

Q. When he first fished there.

A. Oh, it was years ago. One time they tried a scow there before the point was blown off. I don't know when it was. It was some little scow that he had in town.

Q. About what year?

A. I could not tell you.

Q. Give your best—

A. I could not give you any date, because I don't know.

Q. Well, you stated it was before the blasting occurred there.

A. Yes, it was before the blasting.

Q. How long before the blasting occurred?

A. Oh, I could not give you any data on that.

Q. Could you give us some idea?

A. No, I could not give you the slightest idea in the world, because I don't know.

Q. You knew he fished there?

A. I knew he tried there one year.

Q. Well, now, you have testified about other things in detail. Can't you give us some estimate of this?

A. No, I could not give you any definite estimate on that because those things pass through my mind when I see them and I have had no interest in it at that time.

1061 Q. Your memory, then, is not very good with regard to the history of that point?

A. Well, it is,—anything connected with that point in recent years.

Q. Just in recent years?

A. Well, since I have been there; but I could not tell you the day that I saw anything there; or the month, or possibly exactly the year.

Q. Do you remember the fishing wheel of Davis and Boyer?

A. I know there was a man Davis there, was one of the first ones that fished around there with wheels.

Q. That was the old gentleman?

A. Yes.

Q. Didn't his son and Mr. Boyer, Nels Boyer, have a wheel there afterwards?

A. Boyer? I don't know him.

Q. Never knew him?

A. No.

Q. When with regard to the Davis fishing——

A. Old man Davis.

Q. Did Charley Switzler fish there?

A. Oh, I have not any idea. Old man Davis was practically the first man had a scow along there.

Q. Was he before or after Charley Switzler?

A. Oh, he was long before.

Q. About what time did Davis fish there?

A. Oh, I think the first he fished along in there was about 1885 or 1886.

Q. How long after that did Switzler fish in there?

A. Oh, I have not any idea. I could not give you anything definite on the year that Switzler had a scow there, because 1062 it was only there a short time.

Q. Your early recollection of this point is not very definite then?

A. Oh, I think it is outside of, probably, that I could not tell you just what day the water went over it or what day it went off it.

Q. I am not asking for the day, Mr. Seufert; I am asking for the year.

A. We didn't buy the fish off Charley Switzler that time that that scow that he owned there——was owned by a man in The Dalles, and he took it up there to try it. And I think we bought the scow afterwards for Jake Andrews.

Q. You can't fix the time after Davis fished there?

A. Could I fix the time after Davis?

Q. Yes, that Switzler——

A. No, I could not.

Q. Was it a long time or just a short time?

A. Oh, I suppose it was several years afterwards, five or six years, somewhere in there. I could not guess at it. It is simply a guess on my part.

Q. When did you say Davis fished there?

A. I think the first Davis fished there was along about 1884 or 1885 with a scow. I think he had the first scow that was built there.

Q. When did Jake Andrews fish there?

Mr. Bennett: Where do you mean? In the vicinity, or at this point?

Mr. Rankin: At this point is what I am inquiring about.

A. Oh, I don't know exactly the year. It was one year that their scow went through the rapids, and he fished there.

1063 Q. Well, now, what year about was that, to the best of your recollection?

A. Oh, I could not tell you. I don't keep track of every little thing that happens there in that kind of a way, or put it down, unless we buy the fish off those people and I can refer back to the books.

Q. Could you give us an estimate, about?

A. I told you I could not give you any definite estimate or anything of that kind. Whatever I give you is guess-work as far as Jake Andrews, the first year that he fished there, or Charley Switzler, because I have nothing that specially leads my memory to those two years.

Q. You can't fix the year?

A. No, sir.

Q. Was that before or after you bought the cannery that Jake Andrews fished there?

A. That was after I bought the cannery.

Q. Now, when did Peter Jackson first fish there?

A. At this upper point where he now fishes?

Q. No. Well, yes, the upper point.

A. I think Peter Jackson fished there the first year 1911 or 1910. I don't know exactly. It was one of those years.

Q. Did Peter ever fish down at the point where the wall is?

A. No, sir.

Q. He never fished there. What year did you say it was?

A. I think it was 1911 that he fished there at that point, and 1910. He fished on the inside.

Q. Now, would Jackson's scow fishing there interfere with dip net fishing?

A. No, sir.

1064 Q. They could fish—dip and scow could fish there together, could they?

A. I didn't say that.

Q. Well, how about that?

A. His scow fishes there, and 75 feet above there is the place where they dip.

Q. 75 feet above there?

A. Yes.

Q. The scow, then, would not interfere with the dip net fishing down at the point?

A. There is no dip net fishing down on the point, to my knowledge.

Q. Well, the dip net place, as I understand you, is above the scow?

A. Yes, sir.

Q. Well, the scow working there, that would not interfere with the dip net place, would it?

A. Not at all.

Q. They could still dip in there?

A. Sure.

Q. You saw Wasco Charley dipping in there after the scow was operated, you say?

A. Oh, I think it was only the first year or two. The first year, I think, when the scow was there he was there once or twice. In his latter years he didn't go there but very seldom; didn't make much of fishing.

Examination by the Court:

Q. You own a half interest in the Jackson scow?

A. No, sir, Jackson owns the scow himself.

Q. You buy his fish from him?

A. Yes. He is an Indian that is a regular drunk, and we would not trust our own scow with him, because at times he doesn't
1065 take care of it.

Q. You have a license to that point from the State?

A. Yes, sir.

Cross-examination continued:

Q. He fishes under your license?

A. Fishes under our license; or, that is, under an arrangement.

Q. Who paid for the license?

A. I did. The company does.

Q. Jackson paid you for it, did he not?

A. I don't think so. I think since this new law came up we don't take out his license any more, because this new license law specifies the place the license should be taken for. I don't think since the new law came in—we have not charged him; at least that was my instructions to the bookkeeper, not to charge them any license since Mr. Dorrington came on to the ground, not to have anything to do with the Indians, as far as that is concerned.

Q. As a matter of fact, you secure the license for Peter Jackson from the Fish Commissioner of Oregon, and then he fishes enough fish to pay you for it, and it stands in your name?

A. He does not; nor we don't secure the license for any such purpose.

Q. The license stands in your name, does it not?

A. The license is taken by Seufert Bros. Company.

Q. It stands in the name of Seufert Bros. Company?

A. We give Peter Jackson the right to fish that place for us at five cents a pound for his fish.

Q. Just answer my question. The license stands in the
1066 name of Seufert Bros. Company, doesn't it?

A. Yes, sir.

Q. How old a man are you, Mr. Seufert?

A. 63.

Q. When did you first begin scow wheel fishing on the river?

A. Oh, I think Andrews started in there some time about '91 or '92—1900 or 1901.

Q. I mean, when did you, or your company, your interests.

A. Well, that was our interests, when we started with Andrews.

Q. It was '91 or '92?

A. Somewhere along about 1900.

Q. When was it, Mr. Seufert, that you began scow wheel fishing?

A. That was about the time, 1900.

Q. 1900?

A. It was either a little after or about 1900; I don't know the exact year. I could easily tell you by looking on the books.

Q. Was that the first fish wheel you used?

A. The first scow wheel?

Q. Yes.

A. No, we built one a good many years ago up at the head of the rapids.

Q. When was that?

A. Oh, I think that was along in the fore part of the 90's.

Q. When did you first use fish wheels up there?

A. '86 is the first year that we operated fish wheels.

Q. What rapids did you refer to, Mr. Seufert?

A. At the head of Five Mile Rapids was where we had the scow first, the first scow we ever built.

Q. I have forgotten, Mr. Seufert, whether you marked on
1067 this (Defendant's Exhibit A)—is that where Skein is located, where it is marked with a cross on your Exhibit A? I don't know whether you marked that or not.

Court: That was marked by Mr. Seufert's son.

Q. Well, I will ask if it is about correct?

Court: No, this is not the map I have reference to.

A. I think I marked that one time.

Q. That is Skein there?

A. No, I don't know as I marked that. Yes, Skein is right in there.

Q. Well, I don't care who marked it. Is that Skein?

A. That is what we know as Skein since these law-suits came up. We always knew it before as opposite Celilo fishery.

Q. Where is Skein?

A. It is right in here; these shanties in here; and these fishing places you can see them.

Q. Is that a usual and accustomed fishing place for the north side Indians?

A. There?

Q. At Skein.

A. It is out along through here.

Q. Is that what you call Skein, out through here?

A. Well, there is where the Skein Indians claimed that their history shows they fish, all the way from over here clean around this.

Q. Do you know that upper river at all?

A. This here?

Q. No, I am not speaking of that. Do you know the upper river up there around Celilo; are you acquainted with it?

A. Every inch of it.

1068 Q. Where is Skein then?

A. Skein, I tell you, is right there. You can see the houses.

Q. Is this Skein over in here or Celilo?

A. That belongs to the Washington side. Here is the main channel right here.

Q. Is it Skein or Celilo?

A. Celilo is over here.

Q. What do you call this here?

A. We call this the big island on the Washington side, fished by the Skein Indians, as they call themselves now. We always call it the Washington side. Here is the main channel of the Columbia River comes right down through here.

Q. Skein on this map would be where, Mr. Seufert? I believe you marked here Skein on the Defendant's Exhibit G would be here. I believe you marked an "S."

A. It would be right above here. Here is the sand bar, and the Skein village is right in along here.

Q. Is that the usual and accustomed fishing place for the Indians there to fish?

A. This is the usual and accustomed place for the Indians to camp.

Q. Do they fish at Skein or not?

A. Well, I don't know what you define Skein. We call this all Skein right in here.

Q. I am not defining. I am asking you your understanding of Skein. Is that a usual and accustomed fishing place for the Indians?

A. It is. It is all along here.

Q. Is that always open?

A. Yes, sir.

1069 Court: Do you own the upland on that side, Mr. Seufert?

A. I own the upland and the shore line.

Court: On both sides of the river?

A. Right there, yes.

Q. How many Indians fish there, Mr. Seufert?

A. Oh, I could not tell you; sometimes large numbers; sometimes only a few; sometimes hardly any.

Q. About how many?

A. I suppose I have seen fishing in there as much as 40 or 50, 60 Indians, in a good run of fish.

Q. Did you ever prohibit the Indians from fishing in there at Skein?

A. No, sir.

Q. Didn't you ever fence off any property there?

A. Oh, we put a fence in there one time, where some white men wanted to jump it, some years ago. It was after Washington became a state. The first Legislature passed a shore line law authorizing the State Land Board to sell the shore land.

Q. Well, you never put that fence there for the purpose of prohibiting the Indians to fish?

A. Oh, no; there was a gate there when it was put there.

Q. How about Ten Mile Rapids down here? I believe you testified something about that. Is that a usual and accustomed fishing place?

A. I have seen them fish on the Washington side. I have never seen them fish with dip net on the Oregon side.

Q. But on the Washington side is that a usual and accustomed fishing place?

A. Oh, I couldn't say as it is a usual and accustomed fishing place. I have seen Indians fishing there—one or two In-
1070 dians—at different times early in the spring.

Q. Is that always open?

A. We don't own that land on that side.

Q. Do Indians come and go there, or do they live permanently?

A. At Ten Mile?

Q. Res, Ten Mile rapids.

A. I never saw an Indian living there in my life, in all my experience up and down there.

Q. How many Indians have you seen fish there, Mr. Seufert?

A. At Ten Mile?

Q. Yes.

A. Oh, I don't think I saw more than two at any one time.

Q. Is that the largest number you ever saw there?

A. At that point, yes.

Q. You never fenced that place off?

A. I don't own that.

Q. Do you know an old Indian by the name of Wah-me-nashet?

A. I may know him, but I don't know his Indian name.

Q. You don't know him by that name?

A. If you showed me the Indian, I might tell you that I knew him.

Q. You don't know him by that name?

A. No; is it the Indian you had your picture taken with? Is that the one—at the stone at the city hall—that they call Wah-me-nashet?

Q. Did I have my picture taken with an Indian up there?

A. At this big stone at the city hall. I saw it in the Sunday Oregonian.

Q. I wasn't up there.

A. I saw your picture at this stone with the Indians at the
1071 city hall a week ago Sunday.

Q. Would you swear to that?

A. I wouldn't swear to it, but I merely—

Q. If I would tell you I wasn't anywhere near the city hall on Sunday, would you accept that?

A. Oh, I would accept anything you said. I just called your attention to it because I thought that Indian you mentioned was the one that stood at that stone explaining the legend of that stone, that that was the name you mentioned.

Q. Now, the name was cut off this picture, wasn't it, Mr. Seufert? Do you know where it came from?

A. This name?

Q. Yes.

A. I haven't the slightest idea in the world who cut that off.

Mr. Bennett: I will say, Mr. Rankin, to explain that, that was cut off so it would go in here, so we could close this.

Mr. Rankin: All right, Judge.

Q. Now, does this place show where Peter Jackson's wheel is?

A. No, it does not.

Q. Does it show where your scow was located?

A. It does.

Q. And that is the place where you put Sam Williams, pushed Sam Williams' scow off the point?

A. I didn't push him off that point. He didn't get to that point.

Q. Was he ever at that point at all?

A. He was not the day I went down there and told him not to go there.

Q. We don't claim that, but was he ever at this point where 1072 the wall is?

A. I am not certain whether he was or not. I could not tell you that. The day I went down there his scow was behind that point, and he had run probably 200 feet of line around here.

Q. I am not speaking of the day you were down there. I was talking of the fact whether Sam Williams' scow had ever been there or not.

A. I couldn't say as to that. I wasn't down there when it was.

Court: I understand you to say that Sam Williams' scow was never at the point where you anchored your scow.

A. Not to my knowledge, Judge. The day I went down there his scow lay behind this reef, and they had run a line around here and fastened to a ring-post there. And the boys were telling me that he was again attempting to get up there and set himself fast. And I went down there myself, because I didn't want anything done that might cause trouble between them; so I went down myself and told Sam Williams—told my men to untie that line and not let him go through.

Q. Sam Williams was not there, was he?

A. No, sir.

Court: How far was this scow away from yours?

A. We had no scow there at that time.

Court: How far below the place where you—

1073 A. Oh, I suppose if you went right around the rocks probably 200 feet. I should judge they had a line 100 feet, and the scow lay back here in a bay, and they would run this line across, attempting to take the scow around.

Court: Where you had your scow, was that a good fishing point?

A. That place?

Court: Yes.

A. Oh, it isn't what we would call a good fishing point. Charley Switzler and Bruno ran one of our scows there for us, and I don't think they have ever taken in over 500 or 600 dollars a year.

Court: Does that interfere with your fishing point by having the scow down there?

A. Oh, yes; block us out.

Q. Why would it block you out?

A. Well, there is just room there for one scow, and if two were there they could not fish.

Court: This is 200 feet away.

A. Where he was 200 feet away, he could not fish; he was laying back in the eddy, understand. The rock kind of runs here, and bends in here, and his scow was in the eddy attempting to pull around this point, come in there and block us out. The way it came about, our men took a scow down there and started to fish the first of May. When they went down to lower the wheel, something happened and we lost the wheel. And then we had to take the scow away. On the first day of May when the men went down there to lower this wheel—there are two lines let the wheel down, wire rope

3" coil. One of these ropes went down and the other one 1074 caught for some reason—they didn't know why—and of course they let the crabs go, and finally it made a lunge, and this other rope gave a trifle, and it broke one of the arms that the wheel runs with, and we lost the wheel. The consequence was we kept that scow there until we built another wheel on it. We took it down town and built another wheel on it. During that time he attempted to get back there and fish.

Court: That is during that time he attempted to get the position where you had been?

A. Yes, sir. He attempted to take possession of that place. And we warned him off, and he insisted. And the time I went down there there was a young man by the name of Dyball was in charge of the scow. And I told him to desist. He said prosecuting attorney Bell in town had instructed him——

Mr. Rankin: I object to the conversation between Dyball and Mr. Seufert. I had Mr. Dyball here, and we put him on the stand, and this interference is admitted in the pleadings in the case. I don't see any use in going into the testimony.

Court: Is that about the end of your story on that subject?

A. He was on the scow, and said he was in charge and was half owner of it, and the prosecuting attorney had advised him in town to stay on that scow and shoot, shoot till he died. "Why", I says, "Joe, what do you want to do that for? If you are so willing to die, jump in the water. That water is good and swift—save the powder. But we are going to untie the rope." And the boys untied the rope.

Mr. Dyball came ashore—wouldn't stay on the scow when we 1075 untied the rope. And she drifted down into another eddy.

So jokingly I says to him, "Now, Joe, you are half owner, why don't you salvage that scow? We have set her adrift. If I were you I would get on her and anchor her and so salvage her." He

says, "Can you do it?" And I says "Certainly. You own half, you salvage the other half, and you have the whole thing." Him and his men went out there and tied that scow up within half an hour. That was the whole proposition the time I was there.

Court: You may proceed with the examination.

Q. What stage of water did you say was illustrated in this picture marked "Government's Exhibit H"?

A. Oh, I suppose probably three or four feet above low water.

Q. I believe you stated it was four feet above.

A. Well, it is approximately four feet—probably three feet. I can't see very good. I don't know how much it is breaking over the wharf.

Q. Isn't this Peter Jackson's point right here?

A. I would have to get a better pair of glasses, I think, than I have with me to get that close down.

Q. The end of that black line running out there?

A. Well, you could not see Peter Jackson's scow by standing here, because it lays behind.

Q. I am asking if that is the point where Peter Jackson's scow is tied?

A. It is not tied on that point. It may be tied up stream from that point.

Q. How far up above that point would you say that Peter Jackson's scow was tied?

1076 A. Oh, where this blast is made, Peter Jackson's scow probably lays 40 or 50 feet above the upper side where the blast affected the bluff.

Q. Where with respect to this point?

A. I would judge it would be right back about at this point here. His scow is tied to the highest point there.

Q. You say it is on this point here?

A. I should judge that by that picture.

Q. Will you mark it?

A. It is back in here. I should think it lay right in this place.

Q. Put a cross there and run a line up there, please. Now, is it on this side or the other side?

A. On the up side of that blast.

Q. On the up side of that?

A. Yes.

Q. I will just put a "J" there. Now, can't you have dip net fishing along that point?

A. Oh, I don't suppose it would disturb you to go dip net fishing in places, the same as a man would go with a line in places.

Q. You understand I am talking about successful dip net fishing.

A. No, sir.

Q. As the water rises there, wouldn't there be eddies around here where there would be dip net places?

A. No, the Government has sheared that around as close as they can.

Q. Still, there would be places back where there would be eddies, wouldn't there?

1077 A. I wouldn't know where to look for them.

Q. Are you an expert dip net fisherman?

A. I don't know as we have any expert dip net fishermen.

Q. These Indians are expert dip net fishermen?

A. I don't know that they are any more expert than some white men that have worked for me dip net fishing.

Q. Back of this point, at the east end of the wall, isn't there a low place in there where there forms an eddy as the river comes around here, after it has raised above this level?

A. At the present time?

Q. Yes.

A. Oh, there is a large eddy back in there that runs over towards Mr. Gulick's wheel.

Q. I don't mean away above the point. I mean between Jackson's wheel and your wall.

A. Jackson's wheel and our wall?

Q. Yes.

A. If you will say between this point and our wall——

Q. Isn't there a low point in between this wall or this bank coming up from your wall?

A. I never saw it.

Q. Even as the river rises and falls in there, there is no place in there where you could dip net fish?

A. I should not judge so from the flow of the water.

Q. Will you mark on the map that place known as Hungry Bay, where they cross to the ferry?

A. Hungry Harbor?

Q. Hungry Harbor, if that is it—where that is.

1078 Mr. Bennett: Not where they cross with the ferry, but where they lay the ferry up.

Mr. Rankin: Oh, where they lay the ferry up. Just put "H. H." please—Hungry Harbor.

(Witness does so.)

Q. You testified in your direct examination, Mr. Seufert, that the Indians preferred the white to the red salmon. On what do your base that statement?

A. On my experience with them. They often give you a red salmon to get a good big white salmon. They prefer them. They say it is sweeter.

Q. Why?

A. They say the meat is sweeter.

Q. And among white people the red salmon is considered preferable, is it not?

A. Yes, sir. The white people don't want white salmon. They want a red salmon.

Q. You say that Indians before you came never fished at Three Mile Point?

A. Oh, I didn't say anything of the kind. I don't know what they did before I came.

Q. Well, after you came, you say they never fished there?

A. They never made that as a universal fishing ground since I have been there.

Q. You make that statement in the face of all the sworn testimony that has been introduced here, do you?

A. Yes, sir. You can bring a hundred more Indians, and I would still make that statement, that during my time there was no universal fishing at that point.

1079 Q. When did you begin paying five cents a pound to the Indians for fish?

A. Oh, I haven't any idea. I haven't got all my books here.

Q. Wasn't your usual price 3 cents a pound?

A. Yes. And I have sold them myself as low as one-and-a-half cents a pound when I first fished.

Q. I mean in your purchases from the Indians, isn't your usual price 3 cents a pound?

A. Our usual price—no, the latter few years the universal price of Chinook salmon is five cents a pound.

Q. How long has it been five cents a pound?

A. Several years.

Q. How long?

A. Oh, I couldn't tell you without referring to my books.

Q. You testified to a great deal without referring to your books.

A. Well, you ask me about those things, I would have to look at the book to see what year canned salmon went up to tell you what prices were. They are based upon the selling price of canned fish mostly.

Q. Then you cannot fix the year now, the time, that you raised the price to five cents a pound?

A. No, I could not.

Q. Now, how do the Indians generally fish at Celilo? By what means?

A. Oh, they get them with hooks, spears, dip nets.

Q. What is the prevailing method as between those that you have mentioned?

A. Well, I think the bulk of the fish are hooked in the fall fishing. The spring fishing, the bulk of them are caught with
1080 dip nets.

Q. As I understand your testimony, even if you were allowed to fish with scow fish wheels off Three Mile Point, that would not interfere with the Indians dip net fishing there?

A. Why no, there is no place where the scows fish there that there is any dip netting.

Q. If the Indians desired to fish there, that would not interfere with their fishing there at all?

A. We have never objected to the Indians coming there and dip net fishing.

Q. Their dip net fishing would not interfere with your wheels?

A. We would not consider it so.

Court: Well, would your wheel interfere with their dip net fishing?

A. No, sir.

Q. Do you know where Winans had his wheels in 1897?

A. On the Washington side?

Q. Yes.

A. Yes, sir.

Q. Whereabouts on this map? Would you kindly indicate? He had four wheels, did he not?

A. He had three.

Q. Upper ones and lower ones?

A. Well, he had four, but one was only in there one year.

Q. Now, where was the upper wheel?

A. Let me get Five Mile Rapids first. The upper wheel was right in there, he had one wheel.

Q. Where was the other one?

1081 A. The other one is right just below that cable.

Q. Now, were there two lower wheels and two upper wheels?

A. Well, there is another one right back here. There is a cable, and there is another one right back in here somewhere, I think; right where this little dotted line was through there.

Q. Just mark that "W. L." if you will where the lower wheels were.

A. You want the lowest one?

Q. Yes, I want the lowest wheels. I believe they were somewhat together. I am not certain. You know more than I do about it.

A. The lowest one was about there.

Q. In Big Eddy?

A. Well, it is not in Big Eddy. It is just the head of Big Eddy. It was right opposite about here, I should judge.

Q. Put No. 1 there. "W. No. 1." I think you can use this lead pencil better than that. (Witness marks.) Where was the other lower wheel?

A. It was, I think, right in here.

Q. Put "W. No. 2" in there. (Witness marks.) Now, where were the upper wheels—called the upper wheels?

A. Well, I don't know what you call upper wheels. That was the only upper wheel.

Q. In 1897. Where did he have them in 1897?

A. The upper wheel was in there right below Wish-ham.

Q. Mark that "W. No. 3" then.

A. Here is another one that you have skipped.

Q. What do you call that?

A. That is what we call the Cyclone wheel—large wheel.

1082 Q. Before you mark that in there, were there two upper wheels, or was this the other one of the upper wheels?

A. I don't know what you call upper wheel. This is the head of Five Mile, and these wheels down here are neither upper nor lower.

Q. Mark the upper one "No. 3" then—"W. No. 3" put it, please. (Witness does so.) Now, were there any more wheels up at the head there?

A. No, sir.

Q. The other one was down there?

A. Back of the cable. Do you want this "W. No. 4"?

Q. Yes, please.

(Witness marks.)

Q. Was there any Indian fishing at the upper wheel?

A. There?

Q. Yes.

A. Yes. There was quite a dispute there between the Indians and Winans about this place and this place.

Q. Was that the place where the Winans case arose, that upper place there, wheel No. 3?

A. Those two places.

Q. W. No. 3 and W. No. 4?

A. Yes.

Q. Now, you spoke of the Davis wheel. Wasn't that on the Oregon side, right on Three Mile Point?

A. Oh, he had one once right below Henry Gulick, I think, one time. But his principal wheel was right opposite our cannery on the Washington side, is the principal place.

1083 Q. But he had one on the Oregon side, too, didn't he?

A. I think he fished there next that one. He had two scow wheels, and he moved one on the Oregon side—shifted it around.

Q. I believe you stated to your counsel that if the Indians were allowed to fish—or you stated you could not fish in common with wheels. Suppose you had a wheel down on Three Mile, could there be another wheel there?

A. It would not be very safe to run two wheels together.

Q. I mean just a little ways apart.

A. No.

Q. Why couldn't you do that?

A. If you put one wheel in front of another, you might just as well put one instead of two. You would have the expense of taking care of two, the one right behind the other; you could not safely bet on catching any as close together as that.

Q. Wouldn't the upper wheel catch as much as the first wheel?

A. No, sir, I don't think it would.

Q. At the time you had difficulty with Bill Charley up there, how far from your wheel was he attempting to put his wheel?

A. Oh, I should judge, when I went over there that time, he was probably 250 to 300 feet from me.

Q. Above or below?

A. Below.

Q. You objected because it would interfere with the fish catching of your wheel?

A. I did.

Q. When was this, Mr. Seufert?

A. Two years ago.

1084 Q. That would be 1914?

A. Yes, I think it was the spring of 1914.

Q. Whereabouts on the river was that?

A. The lower wheel.

Q. Whereabouts?

A. Right just above the Big Eddy.

Q. But that is Winans No. 1?

A. Yes.

Q. Now, the Washington law, as I understand you, does not allow you to put a wheel within 900 feet of another one's wheel?

A. Yes, sir.

Q. But the Winans decree allows an Indian to fish within 200 feet of a stationary wheel, does it not?

A. It allows him to fish in the accustomed and usual manner.

Q. It doesn't describe the method or character of their fishing, does it?

A. I think so.

Q. Are you certain about that?

Mr. Bennett: The decree shows for itself.

Mr. Rankin: I am asking his recollection.

A. They brought the suit against Winans Bros. under their treaty rights, and I supposed the decree of the court would define their treaty rights, what were they. I never read the Winans decision.

Q. You were a witness in the case of United States v. Winans, were you not?

A. Not to my recollection.

Q. Weren't you a witness in the case of United States v. Linneas Winans and Audubon Winans?

A. Not unless the testimony was taken right close by there. I never was away on the Winans case.

1085 Q. Wasn't it taken in The Dalles on May 21, 1897, before a referee?

A. Well, there might have been, but that is so long since that I don't recollect.

Q. Your name is F. A. Seufert, is it not?

A. Yes, sir.

Q. And weren't you a witness on May 21, 1897, at 9.30 A. M., when Mr. S. C. Henton, Special Examiner from North Yakima, took your testimony at The Dalles, Oregon?

A. I don't recollect as to that.

Q. I will ask you if you testified there in answer to the question "State your name, age, residence and occupation? A. F. A. Seufert, age 45, residence The Dalles, occupation canneryman. Q. How long have you resided here? A. Since 1880. Q. Do you reside in the town? A. I resided in the town seven years, at the cannery for the last 10 years." Is that your testimony?

A. I think that is correct. I think that testimony there is wrong though, as far as residing in the town seven years, because I moved to the cannery in the spring of 1885. It would only be five years. I want to correct that,

Court: Have you a copy of the decree in the Winans case, Mr. Rankin?

Mr. Rankin: No. I can get the decree in the Winans case, and the Court will take judicial knowledge of it. I will provide it later. This is the testimony in that case, your Honor.

Q. At the time you were a witness in that case, Mr. Seufert, you testified regarding Skin. I will ask you if you did not testify as follows: "Q. Up in the neighborhood or vicinity of where
1086 you have your upper wheel on the Washington side, you may state whether or not there is an old fishery there, Indian villages. A. Yes, sir. Q. Is there any obstruction in the way of fences or otherwise to keep any and all Indians from going there to that fishery? A. Yes, the land belongs to me. I have got it fenced. Q. I refer to what is sometimes called the Skin fishery. A. I have that fenced."

A. No, sir, I never testified to any such thing as that Skin fishery never was on the Oregon side.

Q. I will ask you if at that time and place, and before that Special Master, you testified as follows: "Q. Are there other fisheries along there that are open? A. Yes, there is what they call the Ten Mile Rapids; they are all open. Q. Do many Indians fish there? A. Yes. Q. Could you give an idea about how many go there at various times during the year? A. I suppose 25 or 50 sometimes, probably neighborhood of 100, have quite a large camp there."

A. At Ten Mile?

Q. Yes.

A. I never testified anything of the kind.

Q. "Q. Do other Indians come and go there to fish? A. Yes, there is no permanent Indian residents there, they all come and go. Q. Have you excluded the Indians from fishing in your place there? A. When I fenced the land I allowed them to go in, and some lived there." Did you testify anything of that character?

A. I may have testified, because that is the fact. When I fenced that land we allowed some of the Indians to come in.

Q. That is the land you said a moment ago you didn't own, I believe?

1087 A. I didn't say that I didn't own it.

Q. You didn't say you owned any land at Ten Mile?

A. I do not. I didn't in 1897.

Q. Your statement was that you fenced the land. Is that correct?

A. Well, if you will tell me what land you refer to, I will tell you whether I fenced it or whether I did not.

Q. Ten Mile Rapids.

A. No, sir. I never had a fence at Ten Mile Rapids.

Q. This testimony here you gave is incorrect?

A. If it says Ten Mile Rapids, it is incorrect?

Mr. Bennett: He doesn't say that he gave that.

Q. I will ask you if you didn't, at the same time and place and before the same party, in answer to cross examination by Mr. Robertson,

testify as follows: "Q. Mr. Seufert, did you use the word ever advisedly in your testimony when you say you don't think that the Indians ever fished at the points where Winans' upper fish wheels are?

A. Not where the fish wheels are. Q. Where the two lower fish wheels are? A. I have known them to fish there. Q. You have said 'ever' you know that means from the beginning of the world.

A. I don't think they ever fished there, because the lay of the country and lay of the water is such that it is a total impossibility to catch fish there with dip nets. Q. At least twenty men have testified here they did fish there with dip nets. A. I doubt it. Q. That is, you put your opinion against the sworn testimony of twenty persons. A.

Yes, sir, I fished there a good many years, once in a while a man that never fished comes along and tries to fish never catches any. Q. Now

those points where the Indian villages are is above, isn't it?

1088 A. Above. Q. You say they never fished up there. A. I don't say that. Q. You say they did fish there. A. Yes, sir.

Q. You say they never fished at the points where Winans' fish wheel now is? A. Not where the bay fish wheel is."

A. That is correct.

Q. "Q. Now, I will ask you if it isn't a fact that they fished all along from the eddy to the upper part of the rapids. A. They never did; it was a total impossibility for them to do it; I don't think the current of the river was so they could, or it was before 1880." Did you testify to that?

A. Did I testify that they didn't fish along the rapids or below the rapids? I never testified to anything of the kind. That attorney possibly was as misleading as you when I testified that they didn't fish at their upper wheel. The upper wheel was built where the Indians never had fished. They had fished above it and below it.

Q. I will ask you if you didn't, at the same time and place and before the same party, testify as follows: "Q. What is the fact with reference to the wheels catching all the fish in the river? A. I don't think there is anything in that, because we have wheels one above the other and they all catch fish, sometimes the upper wheel catches more than the lower."

A. That is true.

Q. "Q. That is a fact is it? A. Yes, sir."

A. Yes, when they are far enough apart.

Q. "A. Yes, sir, the best wheel we have is one of the upper ones.

Q. Will they all be operated at the same time too? A. Yes, sir." Did you testify to that?

A. Yes, sir. That is true.

1089 Court: How far apart should the wheels be, Mr. Seufert?

A. Most of our wheels are—well, a quarter of a mile; some of them an eighth of a mile.

Mr. Bennett: How is that, Mr. Seufert?

A. Some of them a quarter of a mile, some of them an eighth of a mile; and from our upper wheel on Five Mile Rapids to our wheel on Ten Mile Rapids is probably in the neighborhood of four miles, between those wheels.

Court: I was trying to get at how far apart they should be for successful fishing by each wheel.

A. Well, I always aim to build them on the principle that each one would be far enough apart to take fish that were out in the current, strike in above that way.

Q. How far were the Winans wheels No. 3 and No. 4, that you testified to in this other case—how far were they apart?

A. Oh, three-quarters of a mile or a mile.

Redirect examination:

Q. Where is the wheel that was called at that time the Bay Wheel?

A. Right at the end of the cable marked *tgere* as No. 3.

Q. Show us on the map.

A. The Bay Wheel is the lowest one, number one, on Five Mile Rapids.

Q. This one down here at Five Mile Rapids. Show the Court where the Bay Wheel is.

A. This one right here.

Q. It isn't the wheel up at the head of the rapids, then?

A. No, sir. He blasted a channel through there and put the wheel in here.

1090 Q. I don't care about that. I just wanted to know where the Bay Wheel was. That was all.

A. This is the Bay Wheel.

Q. Now, at that time that case was tried, did you own the land back of this wheel?

A. No, sir. I owned no land over there.

Q. Well, did you own the land back of this Bay Wheel?

A. No, sir. I didn't own any land on that side of the river at that time.

Q. Did you have any land fenced over there.

A. No, sir.

Q. Well, did you own any land here along Ten Mile?

A. Not on the Washington side.

Q. That is what I mean, on the Washington side.

A. I didn't own any on the Oregon side along in there at that time.

Q. Well, now, did you have any land fenced on the Washington side, over there by Ten Mile?

A. I did not.

Q. Well, did you have any land up here by Skein?

A. 1897. We had some land up there, but I think it was a little later than that we bought that.

Q. Assuming that you had that land up there at that time in 1897, do you remember—

A. Yes, I think we had that land then.

Q. Do you remember whether it was fenced or not?

A. I don't think so.

Q. Which of those four wheels—I understood you one of them went out—which one was it?

A. The upper one.

1091 Q. This one up here?

A. The one at the head of the rapids, Five Mile Rapids.

Q. Up here by Wish-ham village?

A. Yes.

Q. Has that ever been replaced?

A. No, sir.

Q. Never has been replaced?

A. No, sir.

Q. When did it go out?

A. They built it in that winter, I think, of 1897, and it went out on the freshet that spring. It never caught, I don't believe, half a dozen fish.

Q. Did you ever own that wheel at all?

A. No, sir.

Q. It hasn't been there, then, for nearly 20 years?

A. Never was replaced.

Q. Where are the wheels, the Winans wheels, that you now own?

A. I own No. 1, No. 2 and No. 4.

Q. That is the Bay Wheel?

A. Yes, sir.

Q. And this one?

A. Yes, sir.

Q. And this one here?

A. One at the cable.

Q. Yes, and the one at the cable.

A. Three wheels I own.

Q. Now, in answer to the questions about these different fish wheels, when you were asked about this Davis wheel and these other wheels, whether they fish at that point, and you say yes, do you mean right at the extreme point?

A. They never fished there at all. They fished above. The Davis wheel on the Washington side was right opposite the cannery above Three Mile Rapids.

1092 Q. Then you mean somewhere in that vicinity?

A. Yes, sir.

Q. When you speak of the point. Is that true? Or what do you say as to what you said about Jake Andrews and Peter Jackson fishing at that point?

A. Jake Andrews never fished down there regularly. He went down there once to try it. That is the only time.

Q. What I am getting at is, what do you say about these places where they fished being at the extreme point?

A. We did not fish at the extreme point.

Q. One question I wanted to ask you. You said you did not let other white men fish at Wish-ham and up at the Skein fishery. Do you and your own men go there to fish?

A. Not with dip nets.

Q. That is what I mean.

A. No. We have always tried to respect the decision of the court there as to the Indians' right, their treaty right and I have taken it up with the agent at different times to fence all that land, put suitable

gates there for the Indians to come in there, in order that now, since there is a railroad over there, and there are a good many strangers going up and down, we will have the Indians in there alone, and put up trespass signs to order others out when they went in there.

Q. Now, I wish you would explain to the Court what you mean when you say that this scow wheel don't interfere with the dip netting?

A. At Jackson's scow, or the lower scow below?

Q. No, this wheel of yours below, or the Jacksons' scow either.

1093 A. They are both at points where there has never been any lip netting. The water boils and boils, makes it a place to fish with wheel; couldn't fish with dip net.

Q. Supposing that there were fish there, and that it was so that an Indian could go there with a dip net and catch them otherwise, then what would you say as to the scow wheel interfering? If it was a dip net place, and you put a scow wheel in that place, what would you say as to its interfering?

A. If we put a scow up close to the bank, you couldn't dip net with the scow laying close to the bank. We spoil up close to the bank.

Q. Is there any other reason why it would not interfere except that this was not a dipping place?

A. That is the only reason.

Q. Now, one thing that I wanted to ask you about, Mr. Seufert, when did your first cannery burn?

A. I think it was 1904.

Q. 1904?

A. Yes, sir. Now, have it understood that that cannery was a different cannery than this one, and in a different place.

Q. It was a different place?

A. Yes, sir.

Q. Where was that first cannery?

A. The first cannery was right up where the old Evans fishery was—saltery.

Q. And when you built the new cannery, you changed the location?

1094 A. Well, we didn't build that cannery—we first made a contract with a firm to build the cannery—

Q. I don't care about that Mr. Seufert. All I want to know is whether you changed the location, or whether the location was changed.

A. We never rebuilt where the cannery burned up.

Q. Now, then, Mr. Seufert, I am not sure whether you were asked about this or not, but during all the times that you have been there, have you ever bought a fish or had a fish offered to you from that point?

A. Three Mile?

Q. Yes.

A. No, sir; not caught with dip net.

Q. What say?

A. No fish caught with a dip net was ever offered to us for sale.

Q. Or any fish that was caught there except these that were caught by Gulick's scow wheel and other scow wheels?

A. That is all.

Q. Did you ever know of any fish there, except what were caught with those scows, being sold to any other place, taken to The Dalles or anywhere?

A. No, sir.

Court:

Q. How near to the Jackson wheel does Gulick's land lay?

A. The north and south line runs right along here, and Jackson's wheel is probably—oh, I should judge 100 feet from the point beyond, that way.

Court: Still north of that?

A. Yes. And Gulick's land is east of that. That is the 1095 north and south line that divides Gulick's land.

Court: Could you point that out on that map?

A. I couldn't give it as correct, Judge.

Q. Where is that other larger map?

A. I could give it to you better on the small map, because the north and south line runs out there.

Court: Very well.

Mr. Rankin: That is Government's Exhibit No. 3 he refers to, I believe.

Court: Let us see the Government's map, the larger map.

A. On the small map I can give you the line just exactly.

Court: Very well; put it on the small map.

A. This is the line right here that divides us this way and Gulick that way. Now, in that lot there, if I recollect right, there is 11 acres and a fraction from here to there. We have $5\frac{1}{2}$ acres at this end, and Mr. Gulick owns $5\frac{1}{2}$ acres at this end. And his wheel is about in here.

Court: That is the Gulick wheel?

A. Yes, sir.

Court: Now, this meander line——

A. This is the meander line right here.

Court: Well, what are these lines running here?

A. This is this north and south section line extended out.

Court: This would be the upland in front of Gulick's property right down to this point?

A. Yes, sir.

Court: Well, now, the wheel has been marked here. There is the wheel.

A. Yes, sir.

1096 Court: Well, then, that fixes it. That is about how far from this line here?

A. Oh, I should judge 200 feet.

Court: Very well.

(Referring to Government's Exhibit 8.)

Recross-examination:

Q. 'This lot 2 of Mr. Gulick's land—Mrs. Gulick owns the front facing lot, doesn't she, along here, the half?

A. No, we bought the east half, and she owns the west half. The Phelps wheel is right on this lot here—Gulick's wheel is there—what we call the Phelps wheel. It was owned by a man named Phelps before we bought it. We owned this other land in here.

Q. When did you build the cannery on your present site?

A. I didn't build that cannery. I bought that.

Q. When did you buy it?

A. I think it was 1897.

Q. 1897?

A. Yes. No, it was 1896.

Q. 1896. What counsel was asking you about, I think, and didn't want to lead you with regard to dip net fishing and scow wheel fishing was why wouldn't a scow wheel monopolize the fishing there—take all the fish and deprive the dip net fisher of any fish?

A. It does. Monopolize just for that point there.

Q. Yes, take the fish around there.

A. When a scow wheel lays there, you couldn't dip between the scow and the bank.

Q. We are not speaking about the exact location of the 1097 scow, but I mean fishing on either side of it.

A. You mean if you fish above the scow that you would not catch as many fish as below the scow?

Q. Yes.

A. That would depend a good deal upon the place. Sometimes a dip net place, the fish come along deep, and then they come up and go on, and it makes it good there, where possibly 50 feet or 5 feet from there wouldn't be good.

Q. So it wouldn't interfere?

A. Sir?

Q. The scow fish wheel fishing would not interfere with the dip net fishing either above the scow or below it?

A. Well, I should judge that it would not.

Q. That it would?

A. It would not interfere. If a man had a dip net place that was 75 feet above a scow, it might be just as good with the scow laying there, and it might not. That would depend entirely on how the fish passed by the wheel.

Q. Dip net fishing just below a scow would not interfere with the scow fishing?

A. No, sir.

Mr. Rankin: I want to call the witness' attention, if your Honor please, to the testimony of Henry Gulick, a witness called on behalf of the defendant, on page 108, where he says: "Q. Do you know what lot you own part of? Do you remember the description of the lot? A. No, I have it here. Q. All right. A. That is a tax certificate. Court: What is that—a deed? A. No, it is a tax list. Court: A tax receipt? A. Yes. The north half of lot 2." How do you

reconcile that, Mr. Seufert, with the statement that you own
1098 the east and west half respectively?

A. The north half of lot 2?

Q. Yes, that is what he said he owned, the north half of lot 2.

Mr. Rankin: If there is any question about that, your Honor, I think proper proof ought to be made.

A. That lot is probably north of this section line.

Q. No, that is the one on which Gulick resides, isn't it—lot 2?

A. He resides right about here.

Q. That is on lot 2?

A. Yes.

Q. He says he owns the north half of it. You say you own the east.

A. Is it the north half of it?

Q. Yes.

A. Well, I don't know how you could cut a lot that is running east and west, divide it north and south, without cutting it through in this way. It never was cut in that way. Even since I owned it, we have always divided it, this channel that came through here, I took that; the people before me took that. Henry and his wife took that. There is a channel cuts right down through here.

Court: You own the east half of Lot 2 instead of the north half?

A. East, and Henry owns west.

Mr. Rankin: I think the deed records will show the north half of Lot 2 belongs to Mrs. Gulick.

Court: The north half of Lot 2?

Mr. Rankin: Yes, clear through. That is what I under-
1099 stand the record title would show. If that is true, I object to the declaration.

A. I don't know anything about those titles. We just simply bought it. I don't think I have ever looked at the title since. But the division was between the people before us, we accepted it so, and we have gone on for 20 odd years or more—30—to operate in that manner.

Mr. Bennett: Well, if you claim that Mr. Gulick owns anything except the west half, or Mrs. Gulick owns anything except the west half of Lot 2, you will have to prove it, because we do not understand that Mrs. Gulick owns the north half, or that it is divided east and west at all.

Mr. Rankin: I don't think the proof rests upon us at all. We have admitted in evidence the testimony taken at the preliminary hearing, in which that is stated by Mr. Gulick, the husband of the owner of this lot, that she owns the north half of Lot 2. Now, that is the accepted ownership. That is admitted. Now, then, they come in and they claim that they own the east half of Lot 2. It seems to me the burden of proof is upon them to prove it differently from what the admitted facts are.

Court: I think there must be some mistake about that.

Mr. Rankin: I think the records at The Dalles will substantiate our contention.

Court: I wish you would get those records, one side or the other. I don't care which.

Mr. Bennett: It is perfectly plain, and we are willing to stand on the testimony as it is. If they want to show anything different from what Mr. Seufert says——

Court: Well, I understand Mr. Gulick, when he was your 1100 witness before——

Mr. Bennett: Yes, Mr. Gulick was our witness. We think Mr. Gulick was evidently mistaken, because that lot does not seem to be divided north and south.

Court: Well, the record would clear up the whole matter. I think you better get the record.

Mr. Bennett: Yes, but it would be a whole lot of trouble, your Honor. Of course, if counsel thinks that it is of sufficient importance, I think it would be up to him to do it. I don't think it makes a bit of difference, as far as that is concerned, in the case. Anyway, we are satisfied to rest on it as it is.

Court: Well, it would make a good deal of difference as to who controlled the land between the shore line and the water's edge. If that was divided east and west, Mr. Gulick would control the whole shore line; whereas, if it was divided north and south, Mr. Gulick would control half of it and Mr. Seufert half.

Mr. Bennett: But it is not, we understand, your Honor, back of any point in dispute.

Court: I think that is probably true.

Mr. Bennett: There is one other matter that I think there is some misunderstanding about. When your Honor was questioning Mr. Seufert, he fixed the location of the wheel down here, and I thought it was in your Honor's mind that that was the Gulick wheel.

Court: No, here is the Jackson wheel.

Mr. Bennett: Yes.

Court: He told me the Gulick wheel was down there.

A. The Gulick wheel is there. Through there is a deep 1101 canyon that forms this back channel. As long as I have owned that land, we have always claimed that side, the east half. I don't know whether that was really the half or not. Part of it probably was in this canyon. Gulicks lived here for 25 years, and always claimed that half; and that was the split-up between us on that lot.

Mr. Rankin: I don't believe the records will show that, your Honor. I don't think the burden of proof is on us to show anything different.

Court: You don't claim any fishing right down where Gulicks have their wheel?

Mr. Rankin: No.

Court: Your right is up where Jackson has his wheel.

Mr. Rankin: On the point that runs into the river.

Court: On the other side?

Mr. Rankin: Yes.

Court: Now, Mr. Seufert, in your recollection, was there any fish-

ing off the extreme point, where the rock has been blown away by the Government, before the rock was blown away?

A. I never saw any there, your Honor.

Excused.

1102 T. J. SEUFERT, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bennett:

— Whereabouts do you reside, Mr. Seufert?

A. Portland.

Q. How long have you resided here in Portland?

A. Seven years.

Q. How long?

A. Seven.

Q. Seven years?

A. Yes, seven years.

Q. Are you a brother of F. A. Seufert?

A. Yes, sir.

Q. Were you at any time interested with him in fishing up in the Columbia River above The Dalles?

A. I was.

Q. Through what years were you interested in that fishing business?

A. From 1882 to 1909.

Q. And since that time have you had any interest in the business up there at all?

A. None whatever.

Q. You have none now?

A. None now.

Q. Now, during the years that you were interested up there, what was your part of the business? What did you have to do?

A. I attended to the running—the fishery, doing the outside work; superintending the building of the fish wheels and catching the fish and the likes of that.

1103 Q. Now, here is a map, Mr. Seufert, and this is supposed to be The Dalles; this is supposed to be the Big Eddy; and here is supposed to be Tenino and Wish-ham village on the other side. Here is Memaloose Island, and here is upper Memaloose Island, and here is Ten Mile Rapids. This is Five Mile Rapids here, and up here is Celilo. I wish you would look at that map and see if you recognize the points on it.

A. Yes, I know all those points.

Q. Now, just show the Court what part of that river your operation of the fish wheels covered.

A. The fish wheels themselves?

Q. Yes.

A. This is the Big Eddy.

Q. Yes.

A. This is about where the cannery is, isn't it? This is Five Mile Creek.

Q. Yes.

A. It would be right in here. The fish wheels were down along here.

Q. How much were you on the river during those years?

A. I was on pretty much every day in the year.

Q. What, if any, acquaintance or business did you have with the Indians along the river?

A. What business connection with them?

Q. Yes, or what acquaintance with them, or business connection?

A. Oh, I had a great deal of business connection with them; a great deal of acquaintance with the Indians.

1104 Q. What was the character of your business with them?

A. Well, I would buy their fish whenever they had any to sell, and look after them and aid in the troubles; whenever they had any disputes or anything, I would settle the disputes between them; any doctors needed for their children or anything, I would look after the medicine end for them; and the likes of that. Pretty close connection all the way through.

Q. Are you acquainted with the point here known as Five Mile Rapids?

A. Five Mile Rapids?

Q. Three Mile Rapids, I mean.

A. Yes, Three Mile Rapids; yes.

Q. Three Mile Point and Three Mile Rapids?

A. Yes; acquainted with all the river along there.

Q. Did you know that before it was blasted off?

A. Yes, before it was blasted off.

Q. Do you know it since it was blasted off?

A. No.

Q. You don't know it since it was blasted off?

A. No.

Q. Does this place look natural to you for that place, or not?

A. Yes.

Q. How well, during those years, were you acquainted with that point?

A. With this particular point at Three Mile?

Q. Yes.

A. Well, I was in and out there more or less there pretty near every day, right above it at the lower fish wheel there; that is, in the summer time.

1105 Q. Now, what do you say, Mr. Seufert, as to whether or not, during those years, that was a usual or accustomed place for the Indians on the north bank of the river to fish?

A. The Washington Indians come over and fish on this side?

Q. Yes; the Washington Indians.

A. I never knew of any fishing there.

Q. Did you ever see any Washington Indians fish there?

A. No.

Q. Now, if there had been any considerable amount of fishing there, or Indians coming there and fishing regularly every year from two to four weeks, or any time, what do you say as to whether you would have seen it or not?

A. Why, sure I would have seen it, certainly.

Q. Was there anything of that kind?

A. No.

Q. Now, Mr. Seufert, what do you say from your knowledge of the Indians and their customs, and your buying fish from them—did you buy fish on both sides of the river?

A. Well, they sometimes brought them across from the Washington side and I bought them on the Oregon side.

Q. Well, now then, what do you say as to the custom of the Indians, as to the Washington Indians fishing on the Oregon side and the Oregon Indians fishing on the Washington side?

A. The Washington Indians never fished on the Oregon side, nor the Oregon Indians never fished on the Washington side.

Q. What were the usual and accustomed places of the Indians on the Washington side to fish?

A. Of the Washington Indians to fish?

Q. Yes.

A. Why, they fished up along the rapids there at Wish-
1106 ham and then up at Celilo on the islands.

Q. What, if you know, was the custom of those Indians from the time that you first knew about them, as to the different families having or claiming places to fish?

A. The Indians, wherever they fish?

Q. What say?

A. Wherever the Indian fished were accustomed, according to his mode of fishing. I didn't quite understand that question.

Q. I see. Well, what I am getting at is in relation to whether the different families owned or claimed to own particular fishing places?

A. Oh, yes. Wherever they fished, that was always the accustomed fishing place of that family.

Q. Now, what do you say as to the other Indians recognizing or not recognizing their ownership in these places where they fished?

A. Oh, they always recognized those.

Cross-examination.

Questions by Mr. Rankin:

— Did you ever visit the Seufert cannery after you left there?

A. No, never been there since I left.

Q. Did you ever hear that Three Mile Point called Wah-sucks?

A. I can't say that I have.

Q. You might have heard it and not known it?

A. I might have heard it and never paid any attention to it.

Q. Did you ever hear it called Lone Tree?

A. Yes, I have heard it called Lone Tree.

Q. How many years have you heard it called Lone Tree?

A. Oh, it has been recognized as that quite a long time.

1107 Q. How?

A. I have heard that different times—for several—quite a long time, Lone Tree.

Q. Do you know how it got the name Lone Tree?

A. No, I do not.

Q. Do you know Peter Jackson?

A. Well, now, right off-hand to call him by name, I don't think I would recognize his name. I know the Indians, but that is as I would see them, by their faces; and it was always Bill Charley and Jack and Bill.

Q. Did you know Sam Williams?

A. Sam Williams. Yes, I knew Sam Williams.

Q. How long did you know Sam Williams?

A. Oh, I knew Sam Williams a good many years.

Q. Where did you know him, Mr. Seufert?

A. I knew him around the cannery, fishery.

Q. Did he work for your cannery?

A. I think he did. He was fishing off and on around the river. I don't know whether he worked in the cannery or not. I never was around the cannery very much, as far as working there. I was always on the outside.

Q. Do you know whether or not he sold fish, he sold fish to your cannery?

A. That I don't know anything about, what was sold in or out of the cannery, because I never handled those fish.

Q. You were outside making selections of places for these people to fish?

A. No, no. Well, that is, I was looking after the fishery, placing our men along the river wherever they were to fish, yes.

Q. Did you ever place Sam Williams along any place?

1108 A. No, I don't know as I ever did.

Q. You don't know whether or not he fished for your cannery?

A. No, I don't remember that.

Q. Did you know Jake Andrews?

A. Jake Andrews, yes.

Q. Did you ever know whether or not Jake Andrews fished on this Lone Tree Point?

A. Jake Andrews? No, I have always known of Wasco Charley fishing there.

Q. Did you ever know of Jake Andrews fishing there?

A. No.

Q. Do you know Charley Switzler?

A. Yes.

Q. Did you ever know of Charley Switzler fishing there?

A. No, I never knew of Charley Switzler fishing there.

Q. You were there during early years. Did you know Davis that ran the wheel.

A. White man, Davis?

Q. Yes, a white man.

A. Yes.

Q. Did he fish off that point?

A. I don't know whether Davis ever fished right at that point. Davis was more interested in his scow wheel he was running then—not as a point wheel. I think his scow wheel was running there.

Q. Did he ever fish with a scow wheel off that point?

A. I rather think he did.

Q. He went into partnership, or his son, I believe, went into partnership with Boyer—is that your recollection of it?

A. Davis' son?

Q. Yes, old man Davis' son.

1109 A. I don't remember Boyer.

Q. What years did Davis fish there?

A. Well, my recollection of Davis fishing in there must have been along about, I should judge, about '88 and '90; between '88 and '90, and along there.

Q. Did you ever see any one else fish in there after that with a scow fish wheel?

A. No.

Q. How did you say Wasco Charley fished in there?

A. Well, that is, I knew of Wasco Charley fishing there. I used to buy his fish. He always told me that he fished there, and he always lived there. Whatever fish he caught he brought in—

Q. How did he fish?

A. With a dip net.

Q. And sold his fish to your cannery?

A. Yes; that is, at that time—at that time I was in the retail business, and he used to bring in his fish on a pack-horse and sell them to me in the retail store, not at the cannery. I never bought any fish at the cannery from Wasco Charley.

Q. Bought them at the store?

A. Yes.

Q. Did he get many fish with a dip net or not?

A. No, he never got very many, not to exceed—well, he would bring in some days a dozen, some days two dozen, just as the run happened to be. Sometimes there would not be any for a long time. His fishing was never very much.

Q. He sold them to you at The Dalles.

A. Yes.

1110 Court: Was that Wasco Charley?

A. Wasco Charley.

Q. Did you ever know of any one else dip netting there besides Wasco Charley?

A. No.

Q. How about Jim Jackson, that used to live up there on Wasco Charley's place.

A. Jim Jackson?

Q. Yes.

A. Never knew of him dipping there at all.

Q. You never knew of him dipping there?

A. No.

Q. Did you know Jerry Bruno?

A. Yes.

Q. Did you ever see him dipping there?

A. No.

Q. Now, you spoke about the Indians on the Washington side not fishing on the Oregon side, and the Oregon Indians not fishing on the Washington side.

A. Yes.

Q. Why didn't they cross over and fish?

A. Well, because the Oregon—that is, the Indians on the Oregon side never recognized that the Washington Indians had any rights over there, nor the Washington Indians never recognized any rights of the Oregon Indians on their side of the river.

Q. Do you know that, Mr. Seufert?

A. Yes, I know that.

Q. How do you know that?

A. I know that from being in contact with that channel for 25 or 30 years.

Q. Did you ever hear of any trouble between the tribes with respect to that?

1111 A. No, no; never was any trouble.

Q. If they did cross there?

A. Never was any trouble. They were always peaceable in all their possessions. Each one recognized the other's rights.

Q. Always peaceable relations between them?

A. Oh, yes.

Q. As far as you ever heard?

A. As far as I ever heard.

Q. Now, I would like to know upon what you base your opinion as to the Washington Indians only fishing on the Washington side and the Oregon Indians only fishing on the Oregon side?

A. Well, I never saw them over there. I was back and forward and they would always fish—when I was at Celilo in the fall buying fish, where they caught fish heavily the Washington Indians would bring them over; but the Oregon Indians used never to go over there, and they would continually recognize their place. For instance: If an Indian came in, I would say, "Where is Doctor Bill's fish today?" "Well, Doctor Bill is not fishing on his station, Doctor Bill, the water is too high for him." And if the other fellow didn't fish, I would ask why he was not. Well, he wasn't fishing because the water was too high for his fishing.

Q. But, when the water wasn't too high, could any one else go there and fish in their place?

A. No, they always fished their own stations.

Q. Suppose one family was fishing at a point on the river, and he had finished with his supply—

A. Well, they never finished with their supply. You never saw an Indian that ever got enough.

1112 Q. They just continually fish at one point?

A. They just continually kept going; that was all there was to it. They never could dry enough; they never could get enough. If there was one, they probably would barter out that right to one another; and they were always in the barter and trade for fishing places. If they had a surplus of dried salmon, they could always trade them off to their other Indian friends. They would trade backwards and forwards, etc., but they would never fish one another's places.

Q. The family, they always retained possession of that fishing point?

A. Yes.

Q. Who of the family would be allowed to fish there?

A. Well, I suppose anybody that was connected with their own family—father and son, likes of that.

Q. Only the immediate relations?

A. Only the immediate relations.

Q. And about how far would the relationship go that would permit them to fish?

A. Well, I don't know, to tell just how far the relationship would run. The relationship of Indians spreads out pretty wide sometimes.

Q. Well, could friends fish at this family place?

A. Well, if a friend came along and they allowed them to fish, it was with their consent.

Q. Yes; and friends could fish?

A. If they were not fishing or for any reason were going to town or anything of that kind, they might allow a friend in to fish. They have done that. But they would always recognize that as their place.

1113 Q. How could they retain possession and control of those places?

A. By mutual consent. It was recognized amongst them.

Q. Did they live right on those places?

A. Live right on them?

Q. Yes.

A. Oh, no.

Q. How could they retain control of them? They didn't fence them, did they?

A. They didn't scrap like the white men do. They would go and live in the same dry houses, and they recognized one another's place. You never found any trouble amongst them. They were always peaceable; and they would put out their dry houses—why, their beds were all on one side and each fellow had his family partitioned off by an imaginary line. So it was with the fishing places—everything was on an imaginary line.

Q. Did you ever hear of one Indian trying to usurp the place of another?

A. No.

Q. Never did that?

A. Never did.

Q. So they didn't need to exercise any control?

A. They didn't need to exercise any control or any police force.

Q. You say Washington Indians brought fish down to the cannery and sold them. Where would they cross the river?

A. No, they didn't bring them—that is, when they brought to the cannery they would cross up above Five Mile Rapids. Wish-ham Indians sometimes would bring them and cross up above the Five Mile Rapids, right up at the section house.

1114 Q. What place is that?

A. That is right above the narrows.

Q. Is that called Tenino?

A. Yes, Tenino.

Q. They would cross there at Tenino?

A. Yes, up at Tenino.

Q. Suppose they caught them below the Winans place, could they cross at the Big Eddy?

A. They could cross at the Big Eddy and come out above the cannery.

Q. Cross there and bring the fish across?

A. Yes, sir; up at the cannery.

Q. Was there any place where they could cross down below the cannery, or did they ever get any fish down there?

A. There was never fishing down below the Big Eddy. The fishing was all done above the Big Eddy.

Excused.

1115 FRANK SEUFERT, JR., recalled for defendant.

Direct examination.

Questions by Mr. Bennett:

— Mr. Seufert, I don't think I asked you when you were on the stand before if you had observed how long it took a run of fish, after you would begin to catch them down here at the lower end of Five Mile Rapids, before you would be catching them up here at Tenino?

A. Oh, I should judge, giving them plenty of time, about three hours.

Q. How long would it be from the time that you would catch them here about the Big Eddy, and down there lower there if you had any place where you caught them—how long would it be until you would be catching them up at Celilo?

A. Oh, allow them about a day and a half.

Cross-examination.

Questions by Mr. Rankin:

— You have been in the court room all the time with respect—listening to the testimony of others regarding the running of fish up there, haven't you, Mr. Seufert?

A. Yes, sir.

Q. Did you ever made any test by marking fish and watching them go up?

A. The only test we have—a wheel may run along down below there and not catch a few hundred pounds; and all at once it will jump up to 1500 or three or four times as much. And in a few hours, why, they go right up the river. You can follow them right up, every wheel, by the time they will show up here before there will be an increase to correspond with that increase.

Q. When you speak of 1500 pounds, do you mean 1500 pounds a day or an hour?

A. Yes. Well, figure any weight—the only way you can tell is when there is a run coming. You can't tell by a few fish because they vary; but when there is a big increase, say 50 or 60 per cent increase in the catch. You will find all along the river if it shows up at this wheel it will show up on every wheel all the way through.

Q. When the fish are running, isn't there a steady catch of fish all the time by an individual wheel?

A. Oh, no; they come along—they may run for a day or two days, then they drop right down again. They just come along in schools.

Q. How much will one of those wheels catch in a day?

A. Oh, I don't know what they really would catch. I would have to look, possibly, at the records of them.

Q. What have they caught?

A. Oh, I guess, along when I was possibly a boy they would catch 15 or 20 ton a day, maybe more.

Q. How much do they catch now? How much did they catch last year, on an average?

Mr. Bennett: On an average?

Q. Taking some individual wheel, how much would it catch in a day?

A. You mean the biggest, or the lowest, or average?

Q. Well, say average.

1117 A. Well, that would be very hard to tell. Now, some of them in the whole season don't catch over two or three ton. And then others possibly will go to 50 or 60 ton.

Q. Well, the average would be about—

A. But we only have one wheel—

Q. Thirty-one tons then, in a season?

A. Oh, they won't average that, because while we have one wheel that would catch that, we have six or eight that would not go over 10 or 11 tons.

Q. How much will any wheel along there in Five Mile, say, how much will it average a day?

A. Oh, I could not give you that because there is days they won't catch a fish.

Q. Well, I mean days they will catch several ton.

A. There is days they will catch several ton.

Q. How many ton is the maximum?

A. The best one—I don't know. I would hate to guess at it, because I would be so far off possibly that it might look ridiculous.

Q. You would have more clearly fixed in your mind the amount

of fish that an individual wheel would catch than you would the speed of a fish going up the river, wouldn't you?

A. Well, I don't quite understand your question there.

Q. You say you don't know how much any wheel would catch in Five Mile Rapids during a day, and yet you are testifying to the speed of the fish going up the river. I am asking you if it wouldn't be more in your duty, more in your knowledge to know how much those wheels were catching than the speed of a fish going up the river?

A. Why, not necessarily, the way we judge. Now, you 1118 take a wheel down here would be catching possibly 500 pounds; the one up above would be catching 1500 pounds—best wheel along there. This one would increase 50 per cent; that one would increase 50 on top of the 1500. And that is where I base my opinion of them going. There is no two of them would catch exactly alike; but they would increase according to what they was catching before.

Excused.

1119 L. A. SCHANNO, recalled for the defendant.

Direct examination.

Questions by Mr. Bennett:

—, I believe you stated you are here on the grand jury?

A. Yes, sir.

Q. And how old a man are you?

A. 40.

Q. This is a map. This purports to be The Dalles. This is the Big Eddy, the mouth of Five Mile Creek on the Oregon side here; Seufert's cannery; here are Five Mile Rapids, this being Lower Memaloose Island and this Upper Memaloose Island. Here is Ten Mile Rapids.

Mr. Rankin: Upper Memaloose has never been designated before, has it, Judge?

Mr. Bennett: Oh, yes; by half a dozen other witnesses.

Court: It cuts but little figure anyhow. Go on.

Q. Here is Ten Mile Rapids, and here is Celilo; here being the Indian village of Skein, opposite Celilo, and this being the Indian village of Wish-ham opposite Tenino. Now, then, here is the point in dispute at Three Mile Rapids. Now, how far from that point have you lived during your life-time?

A. Well, I have always lived in the city.

Q. Well, about how far is your home from that point?

A. I should judge $2\frac{1}{2}$ miles.

Q. How well, during the time that you have lived there—how well have you become acquainted with that point?

A. Well, I have been in sight of the point a good many times.

1120 As the wagon-road leads out past Seufert's, I have been there myself on that point and been past it in row boats a good many times.

Q. And have you ever been on the island for any purpose?

A. Oh, yes, yes; we have shot ducks from that point.

Q. Now, then, you testified the other day to being up the river unfortunately in my company a number of times. Now, what purpose would you be going up there in the boat with me for?

A. Well, at that time we had a duck preserve on the other side of the river, and we used to take that means of going to it and from it.

Court: Where was that?

A. Opposite Seufert's cannery; almost due north.

Q. Could you indicate about where, here on the map?

A. Seufert's cannery is—this is the Big Eddy; this is Seufert's cannery.

Q. No.

A. This is Five Mile?

Q. Yes.

A. This is Seufert's cannery. Almost due north, those lakes were. They were right in here, about here. Where is the lake on the other side—that is not estimated on this.

Court: Well, that is near enough.

Q. Now, then, where did we ordinarily land to go over there?

A. Ordinarily below here, below this point in here; sometimes down here, but ordinarily we went up into that.

Q. Now, landing at that place, what was the character of the country that we had to go over to get to the lake?

A. Well, from the river, from the shore up was quite a steep hill, that is for a while it was very steep; and after we were up on
1121 top it was apparently level to the cabins.

Q. Now, in going up there, what do you say as to whether there was anything preventing—any obstruction which prevented you from seeing across there from where we would land with the boats to this point?

A. There was nothing.

Q. How far would it be from that point?

A. From that point?

Q. Yes.

A. With the river there, which is probably, I would say, 500 yards, or not quite that much—about 400 yards.

Q. Now, then, at what time would we be going over there, or would you be going over there?

A. Most of the time was in the fall of the year; and we did go in the summer several times; all during the—I know the water was high sometimes, and that was during June probably.

Q. Now, do you know the Indian called Wasco Charley?

A. I do.

Q. What is your business there, Mr. Schanno, at The Dalles?

A. Merchant; selling groceries and hardware.

Q. Groceries and hardware?

A. Yes.

Q. To what extent do you have Indian customers, if at all?

A. You mean—Indian customers?

Q. Yes; to what extent do you have Indian customers at your store?

A. We have a lot of Indian customers.

Q. You have a lot of Indian customers?

A. Yes, both from the Washington side and from the Oregon side.

Q. Do the Washington Indians come over there to trade?

1122 A. Yes.

Q. And also the Oregon Indians?

A. Yes.

Q. Now, Mr. Schanno, what do you say as to whether that point is a recognized or any Indian fishing point up there about The Dalles?

Mr. Rankin: Objected to. He has not qualified himself as knowing about Indians or their habits or customs outside of a little mercantile business there in The Dalles. Why, I can bring in five hundred men up there who will testify to the same thing counsel is contending for, that don't know anything about Indian customs or habits.

Mr. Bennett: It seems to me, your Honor, this witness having lived there all that time—

Court: I will admit this. He may answer the question.

Mr. Rankin: Save an exception.

Court: Very well.

A. Well, I have never seen any Indians fishing there with the exception of a scow wheel, and also some gill nets below. Now, a few years ago an Indian by the name of Jackson, his name was Jackson—anyhow, he was drowned there. I don't know what his other name was. I believe he had a scow wheel on that point. And afterwards I think the Indian by the name of Sam Williams had a scow wheel there. But in all my experience I have never seen a dip net or a spear or any of that paraphernalia for catching salmon at that point.

Q. Well, did you ever hear of it as a fishing point with a dip net?

A: I never did.

Q. Now, where were the recognized usual and accustomed places of the north bank or Yakima Indians—

1123 Court: I don't think it is necessary to go into that any further.

Mr. Bennett: Your Honor won't permit me to show by this witness—

Court: No, I don't think it is necessary. I allowed you to have your witnesses testify to those fishing places heretofore for the purpose of showing the custom and habit of the Indians in fishing, not to establish any other fishing places. I denied the Government the right to establish fishing places on this side above the one in dispute.

Mr. Bennett: I think your Honor will permit us an exception to that.

Court: Very well.

Q. Well, I will ask you this question as bearing upon your other testimony: What do you say as to whether, during the years you have lived there, Indian dip net fishing was a matter of interest which would have attracted your attention?

A. I believe it would, yes.

Q. What do you say as to being a matter of interest?

A. Well, it would be a matter of interest. I have seen them dip there, and went specially to see them dip above these places.

Cross-examination.

Questions by Mr. Rankin:

— Now, when you were up there, we will say, in the summer-time, that is, the first part of the year, you landed right in Little Eddy—what they call Little Eddy?

A. On the opposite side of the river from Three Mile Point. Sometimes there is a scow wheel that lays just on the Washington side below the Three Mile Point—sometimes we would stop behind this wheel.

Q. Is that what they call Little Eddy?

A. Well, I don't know—the eddy here that runs over here?

Q. Let me call your attention to Government's Exhibit 7, Mr. Schanno, which I understand the evidence shows is an enlarged portion of Three Mile Rapids. Now, there is what they call Little Eddy. This is Three Mile Point here. Would you land up here on a sand beach?

A. We would not go through this. We would stop back by these islands there.

Q. There is an old fish wheel there—an old fish wheel there—I don't know which one you refer to.

A. It is this one here. We would stop sometimes right behind this fish wheel. Other times when we could get around here—you know the river was extremely swift at these fishing places—we would sometimes stop here and sometimes we would go up here; if we would be extra warm when we got here we would stop behind this one; otherwise we would go up to the next one.

Q. What were you doing up there in the summer time?

A. Well, we used to go over occasionally to see how our duck preserve was.

Q. You were not hunting out of season there?

A. No, no. We never violated any hunting laws.

Q. Indians might have fished there and you never known it?

A. Well, they might have fished there, and I might not have known it.

Redirect examination:

Q. What do you say as to whether they could have fished there regularly, in any considerable number every year, and you not have known it?

1125 A. I don't believe that could be true. Now, in all the fishing grounds and all where they fish with dip nets, they usually build up a platform, and if the water is receding a little, those platforms stay there quite a while; no matter when you go, you would probably see those platforms where they stand on.

Q. Well, did you ever see anything of that kind up there?

A. Never saw anything of that kind there.

Q. Now, I wish you would mark, as near as you can, with this red pencil a cross and a letter "S" at the point where we generally landed up here, as you have described.

A. Well, now, this is the point. This is an island that is there during low water. We would land right up into this. But these islands were connected here kind of together. And we went up over this bluff, up this side of the hill there.

Q. Did you mark that with a cross and an "S"?

A. Right here?

Q. Wherever you say we used to land.

A. That is the place we used to land there, as near as I can tell from the map here.

Q. Did you mark an "S" there too, and a cross?

(Witness does so.)

(Recross:)

Q. Were you asked to be a witness in this case after or before your testimony the other day, Mr. Schanno?

A. It was after.

Excused.

1126 GILBERT HALL, a witness called by the Government in rebuttal, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Rankin:

— Your name is Gilbert L. Hall? You are superintendent of the Warm Spring Indian Reservation, residing at Warm Spring, Oregon?

A. Yes, sir.

Q. I will ask you, Mr. Hall, if Charles Switzler did not, on the 17th day of April, at Warm Spring, Oregon, tell you that Sam Williams was the first person who ever fished at the point now claimed by Sam, and that he was the first to fish there with a scow; that he, Charley, showed Sam the place, and told him that the old Yakima Indians had told him about it, and that it was an old fishing ground?

Mr. Bennett: Objected to upon the ground that there was no sufficient foundation laid; that the time and place and persons present were not sufficiently called to the attention of the witness. Objection overruled.

A. He made that statement to me.

Witness excused.

Government rests.

A. S. BENNETT,
*Solicitor and Attorney for
Appellant and Defendant.*

1127 UNITED STATES OF AMERICA,
District of Oregon, ss:

It appearing to the Court that there is a conflict of testimony in relation to certain points made in the appeal and that it will be necessary for the Appellate Court to pass upon the weight of the testimony, it is ordered and directed that the testimony of the witnesses hereinbefore set forth be re-produced in the exact words of the witnesses.

R. S. BEAN,
District Judge.

1128 UNITED STATES OF AMERICA,
District of Oregon, ss:

Now at this time the above entitled cause coming on, upon motion for settlement of appellant's proposed statement of evidence on appeal herein, appellant appearing by A. S. Bennett and the United States appearing by Robert R. Rankin, Assistant United States Attorney for said district, and it appearing to the Court that the proposed statement of evidence contains all the evidence which it is desired by the parties hereto should be incorporated on the transcript on appeal:

Now, Therefore, it is hereby ordered that said proposed statement of evidence is hereby settled and allowed as it appears herein.

Dated at Portland, Oregon, this first day of March, 1917.

R. S. BEAN, *Judge.*

Filed March 2, 1917. G. H. Marsh, Clerk.

1129 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon do hereby certify that the foregoing pages numbered from 3 to 1128 constitute the transcript of record on appeal in the cause in said court in which the United States of America as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex rel. Sam Williams, is plaintiff and appellee, and Seufert Brothers Company, a corporation, is defendant and appellant; that the foregoing transcript has been prepared by me in accordance with the præcipe for transcript filed in said cause by the said appellant, and is a full, true, and complete transcript of the record and proceedings had in said court in said cause designated by the said præcipe for transcript to be included therein, and of the statement of the evidence as settled by the court, as the same appear of record and on file in my office and in my custody, except that the demurrer to the bill of complaint mentioned in said præcipe is not included in the foregoing transcript for the reason that such demurrer is not on file in said cause.

I return attached to said transcript the original citation issued in said cause, together with the proof of service thereof.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court at Portland in said District this 16th day of April, 1917.

[Seal United States District Court, Oregon.]

G. H. MARSH, *Clerk.*

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex Rel. Sam Williams, Appellants,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Appellee.

Transcript of Record.

On Appeal from the District Court of the United States for the District of Oregon.

1 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA, as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Citation.

UNITED STATES OF AMERICA,
District of Oregon, ss:

To Seufert Brothers Company, a corporation, and R. R. Butler and Bennett and Galloway, its attorneys, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, within sixty days from the date of this writ, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the district of Oregon from a final decree filed and entered on the 31st day of July, 1916, in that certain suit, being in equity number 6766, wherein the United States, as trustee and guardian of the confederated tribes and bands of the Yakima Nation of Indians, and as trustee and guardian of and ex rel. Sam Williams, is plaintiff and appellant, and Seufert Brothers Company, a corporation, is defendant and appellee, to show cause, if any there be, why the
2 decree rendered against this said appellant in the particulars described in the assignments of error herein should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable R. S. Bean, United States District Judge for the District of Oregon, this 1st day of March, 1917, and of the independence of the United States one hundred forty-first.

R. S. BEAN,
United States District Judge for the District of Oregon.

3 UNITED STATES OF AMERICA,
District of Oregon, ss:

Due and legal service of the within citation is hereby admitted at Portland, Oregon, this 1st day of March, 1917.

A. S. BENNETT,
Attorneys for Appellee.

4 [Endorsed:] No. 6766. 19—277. In the District Court of the United States for the District of Oregon. United States of America, etc., vs. Seufert Brothers Company, a corporation, Defendant. Citation. Filed March 1, 1917. G. H. Marsh, Clerk, by ———, Deputy.

5 In the District Court of the United States for the District of Oregon, November Term, 1916.

Be it remembered, That on the 1st day of March, 1917, there was duly filed in the District Court of the United States for the District of Oregon, a Petition for Appeal, in words and figures as follows, to wit:

6 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA, as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Petition for Appeal.

To the Honorable Charles E. Wolverton and the Honorable Robert S. Bean, judges of the above entitled court:

The above named plaintiff, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 31st day of July, A. D. 1916, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment

of errors filed herewith and petitioner prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated by this court, be sent to the Supreme Court of the United States sitting at Washington, D. C., under the rules of such court in such cases made and provided.

Dated at Portland, Oregon, this 1st day of March, 1917.

ROBERT R. RANKIN,

Assistant United States Attorney and Solicitor for Plaintiff.

7 UNITED STATES OF AMERICA,
District of Oregon, ss:

On motion of Robert R. Rankin, Esquire, Assistant United States Attorney and solicitor for plaintiff, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be and the same is hereby allowed and that a certified transcript of the record, testimony, exhibits and all proceedings be forthwith transmitted to the Supreme Court of the United States in manner prescribed by law.

Dated at Portland, Oregon, this 1st day of March 1917.

R. S. BEAN,

Judge of the Above Entitled Court.

8 UNITED STATES OF AMERICA,
District of Oregon, ss:

Due and legal service, by certified copy, of the foregoing petition for appeal is hereby admitted at Portland, Oregon, this 1st day of March 1917.

A. S. BENNETT,

Attorney and Solicitor for Defendant.

Filed March 1, 1917. G. H. Marsh, Clerk, by K. F. Frazer, Deputy.

9 And afterwards, to wit, on the 1st day of March, 1917, there was duly filed in said Court, an Assignment of Errors, in words and figures as follows, to wit:

10 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA, as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant.

Assignments of Error.

Comes now the United States of America, appearing by Robert R. Rankin, its Assistant United States Attorney for the district of Oregon, and files the following assignments of error upon which it will rely in its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 31st day of July, 1916:

I.

That the United States District Court for the district of Oregon erred in not decreeing that Sam Williams was a Yakima Indian.

II.

"The said District Court erred in not decreeing that Sam Williams was a ward of the United States in the sense that the United States is required to interpose in the protection of fishing rights reserved to Yakima Indians under the Yakima treaty of 1855. (12 Stat. L. 951.)

11

III.

The said District Court erred in not decreeing the United States could interpose in behalf of Sam Williams as a ward of the United States in the protection of his fishing rights as a Yakima Indian under the Yakima treaty of 1855. (12 Stat. L. 951.)

IV.

The said District Court erred in not decreeing that all the waters along the shore line of the entire point of rocks opposite lots two (2) and three (3) in section thirty-six (36), township one (1), north of range thirteen (13) east of the Willamette Meridian, and opposite lot one (1), in section one (1), township two (2) north of range thirteen (13) east of the Willamette meridian, were usual

and accustomed fishing places of the Yakima Indians, within the meaning of that term as used in the Yakima treaty of 1855.

Wherefore, the appellant prays that said decree be reversed in the above designated particulars and that a decree be entered in behalf of appellant herein.

Dated at Portland, Oregon, this 1st day of March, 1917.

ROBERT R. RANKIN,

Assistant United States Attorney and Attorney for Appellant.

12 UNITED STATES OF AMERICA,
District of Oregon, ss:

Due and legal service of the within assignments of error is hereby admitted at Portland, Oregon, this 1st day of March 1917.

A. S. BENNETT,

Attorneys for Appellee.

Filed March 1, 1917. G. H. Marsh, Clerk, by K. F. Frazer, Deputy.

13 And afterwards, to wit, on the 6th day of March, 1917, there was duly filed in said Court, a Præcipe for Transcript, in words and figures as follows, to wit:

14 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff and Appellant,

vs.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant and Respondent.

Appellant's Præcipe for Evidence.

Comes now the United States of America, as above named in the above entitled cause, and makes this, its præcipe, wherein is indicated those portions of the record which it desires to be incorporated in the transcript of record on appeal, said portions being as follows:

1. A printed copy of the transcript on appeal made in behalf of Seufert Brothers Company as appellant in the original appeal herein;
2. Petition for appeal of United States;
3. Assignments of error of United States;
4. Citation on appeal of the United States with acknowledgment of service;
5. Order allowing appeal;

6. The following evidence;
- (a) Opening statement introducing Government's Exhibit 1;
 - (b) Opening statement introducing Government's Exhibit 2;
 - (c) Testimony of Don M. Carr;
- 15 (d) Testimony of S. C. Shubert;
- (e) Report of George W. Gordon, Special Indian Agent, in the field, The Dalles, Oregon, January 12, 1889, to the Commissioner of Indian Affairs, at Washington, D. C.;
 - (f) Report of George W. Gordon, Special Indian Agent, in the field, January 19, 1889, 4449, Indian office reports for year 1889;
 - (g) Maps referred to in the Special Agent George W. Gordon's report, particularly the map "1813 Indian Office, Inclos- No. 5, 1889";
7. (a) Government's Exhibit 1, being a certified copy of the general schedule of allotments on the Yakima Indian reservation in the state of Washington, disclosing Sam Williams as an allottee, among others;
- (b) Government's Exhibit 2, certified copy of a particular schedule of allotment of Sam Williams;
 - (c) Government's Exhibit 3; trust deed from United States to Sam Williams, dated July 10, 1897;
 - (d) Government's Exhibit 6; certified copy of the United States Engineer's map of the Columbia River from Celilo to The Dalles, containing that small portion of the original map including the point in question;
 - (e) Government's Exhibit 7; blue print of a map of Three Mile Rapids of the Columbia River showing the original point and work done thereon by the United States Engineers;
 - (f) Government's Exhibit 8, blue print of a map of the whole point made from a survey authorized by F. A. Saufert;
- 16 (g) Defendant's Exhibit G, map of the Columbia River from Celilo to The Dalles, large size.

With relation to the exhibits herein, notice is further given that an order of the court will be asked by the undersigned which order will refer these original exhibits to the United States Supreme Court.

Dated at Portland, Oregon, this 5th day of March, 1917.

ROBERT R. RANKIN,
Assistant United States Attorney.

UNITED STATES OF AMERICA,
District of Oregon, ss:

I hereby certify that I have prepared the foregoing copy of præcipe for evidence, and that the same is a full, true and correct copy of the original and of the whole thereof.

Dated at Portland, Oregon, this 5th day of March, 1917.

Assistant United States Attorney.

I hereby certify the original and a copy thereof have been served upon opposing counsel by mail—and the original not returned.

ROBERT R. RANKIN,
Ass't U. S. Att'y.

Filed March 6, 1917. G. H. Marsh, Clerk.

17 And afterwards, to wit, on Tuesday, the 27th day of March 1917, the same being the 20th Judicial day of the Regular March Term of said Court; present the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

18 In the District Court of the United States for the District of Oregon.

No. 6766.

UNITED STATES OF AMERICA, as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff and Appellant,

v.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant and Respondent.

March 27, 1917.

Now at this day on motion of Mr. Robert R. Rankin, of counsel for the plaintiff and appellant in the above entitled cause, and for good cause shown to the court, it is ordered that the clerk of this court transmit with the transcript of record in this cause to the Supreme Court of the United States the following original exhibits: Government's Exhibit- 1, 2, 3, 6, 7, 8, and Defendant's Exhibit G; and that none of said exhibits be copied into the transcript of record on appeal in this cause.

CHAS. E. WOLVERTON, *Judge.*

Filed March 27, 1917. G. H. Marsh, Clerk.

19 And afterwards, to wit, on the 28th day of March, 1917, there was duly filed in said Court, a Statement of the Evidence, in words and figures as follows, to wit:

20 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, as Trustee and Guardian of the Confederated Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex Rel. Sam Williams, Plaintiff and Appellant,

v.

SEUFERT BROTHERS COMPANY, a Corporation, Defendant and Respondent.

Proposed Statement.

Be it remembered that this cause came on be heard before the Honorable Charles E. Wolverton, Judge of the above entitled court on the 21st day of July, 1916, at the hour of ten o'clock a. m., plaintiff appearing by Robert R. Rankin, Assistant United States Attorney for the district of Oregon, and defendant appearing by R. R. Butler and Bennett & Galloway, attorneys, of The Dalles, Oregon, whereupon, among other matters, the following introduction of evidence was had:

At the opening of the trial there was offered and received in evidence over the objection of counsel for the defendant, and upon exception duly allowed, a certified copy of the allotments upon the Yakima Indian reservation, in the state of Washington, disclosing, among others, the allotment of Sam Williams, which certified copy was marked as Government's Exhibit No. 1; and

There was offered and received in evidence over the objection of counsel for defendant and upon exception duly allowed, a certified copy of the schedule of allotment of Sam Williams, upon the
21 Yakima Indian reservation in the state of Washington which was marked as Government's Exhibit No. 2; and

There was thereupon offered and received in evidence over the objection of counsel for defendant upon exception duly allowed, a trust deed from the United States to Sam Williams, dated July 10, 1897, marked Government's Exhibit No. 3;

Whereupon, DON M. CARR was called by the government, duly sworn and testified in substance as follows, to wit:

"I am the superintendent of the Yakima Indian reservation in the state of Washington, which reservation is under the supervision of the Commissioner of Indian Affairs, Department of the Interior. One-half of the allotment of Sam Williams has been sold under supervision of the government and upon authority of an act of congress providing for the sale of Indian lands for Indians known as noncompetents, or wards of the United States, but the other half has never been alienated and he yet retains the same as a beneficiary of the government. The United States holds the title to the remaining half of his allotment in trust. A Yakima, or any other Indian who

has received an allotment, may make application to the Government for a fee patent either within or after the trust period of twenty-five years, and upon satisfactory showing position a fee patent."

On cross examination Mr. Carr stated that the inference from United States laws was that the United States starts with a presumption that all Indians are incompetent during which period the jurisdiction to which these Indians belong looks out for their rights and before they can be declared competent they must go through
22 some proceeding showing themselves to be competent.

Whereupon S. C. SHUBERT was called as a witness for the government, and being duly sworn, testified:

"I am the Assistant Engineer for the United States War Department, and have in my jurisdiction that district comprising the Columbia River and I have been in the service since January 4, 1900, and 1904 I surveyed Three Mile Rapids on the Columbia River in connection with my work in building the Dalles-Celilo canal. I identify this map (known as Government's Exhibit No. 6), and Lenhart's survey as a blue print map of an official record of my office. The map shows the topography of the country and the hydrography of the river from The Dalles, Oregon, to a point approximately half way up Five Mile Rapids and including Three Mile Rapids and Seufert's cannery, marked at "X" at the mouth of Five Mile Creek. Location "6" was the head of Three Mile Rapids, although this map indicates Three Mile Rapids extended to the next point above (Covington's Point). There is a channel running back of the high ground at location "6" marked by pencil lines from Point "A" to "B," and another channel from point "C" to "D," and when the water is at a height of 10 feet above low water, the river runs through these channels. The figures on the land represent the elevation of the particular point above the plane of the map and the low water as we adopted it was 8.5 feet above the plane of the map so the particular elevation of a point would be the difference between the elevation of low water (8.5 feet) and the elevation given. The figures in the river represent the depth of the water at extreme low water, and where there is a zero above the figure the depth is something over the data given. That portion of the point running into the river from a marginal line from the point marked "S" to the point marked "W" shows that portion of the point of rock which was blasted off and the "S. W." line is about 450 feet in length."

Witness identified Government's Exhibit No. 7 as a blue print copy of an official map made under his direction showing the Columbia River from the head of location No. "6" to the foot of Three Mile Rapids, which map has a vicinity map in the upper left hand corner particularly identifying this sheet as sheet one of detail map. At location No. "6" the entire outer line unbroken indicated the low water line; the inner line indicated the southern boundary of the excavation work, and the dotted line between the two indicated the limit of the first work that was done when the excavation was made

to a plane [10 ft.]* below low water. The irregular outer line showed the original unbroken coast.

When the river was at a height of 20.8 feet there would be a few points at location No. "6" out of the water. When the river was at 29.6 feet the point would be covered. There are whirlpools in the river and boils which are not dangerous to small boats.

It is hereby ordered that the above proposed statement of evidence be and the same is hereby settled as proposed, and is the statement of evidence allowed on appeal herein.

Dated this 27th day of March, 1917.

CHAS. E. WOLVERTON,
Judge of the Above Entitled Court.

G. H. MARSH, Clerk.

Filed March 28, 1917.

24 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that the foregoing pages numbered 5 to 23, inclusive, constitute the transcript of record on appeal in the cause in said court in which the United States of America as Trustee and Guardian of the Confederate Tribes and Bands of the Yakima Nation of Indians, and as Trustee and Guardian of and ex rel. Sam Williams, is plaintiff and appellant, and Seufert Brothers Company, a corporation, is defendant and appellee. That the foregoing transcript of the record and proceedings had in said cause and of the statement of evidence as the same was settled by the court is a true and complete transcript of the original thereof as the same appears of record and on file at my office and in my custody. That the foregoing transcript has been prepared in accordance with the direction of the præcipe for transcript filed in said cause by said appellant and contains a copy of the record and proceedings designated by said præcipe to be included therein, except that the printed copy of the transcript on appeal made in behalf of Seufert Brothers Company as appellant in the original appeal herein, designated in paragraph 1 of said præcipe, is omitted for the reason that no such printed copy is of record or on file at my office or in my custody; that the report of George W. Gordon, Special Agent, in the field, The Dalles, Oregon, January 12, 1889, to the Commissioner of Indian Affairs at Washington, D. C., designated in paragraph 6 (e) of said præcipe; the report of George W. Gordon, Special Indian Agent, in the field, January 19, 1889, 4449, Indian Office reports for the year 1889, designated in paragraph 6 (f) of said præcipe; and maps referred to in the Special Agent George W. Gordon's report, particularly map "1813, Indian Office, Inclos- 5, 1889," designated in paragraph 6 (g) of said

25

*Written with pencil.

præcipe, are each omitted from the foregoing transcript, for the reason that neither of said reports nor said maps are of record or on file in my office or in my custody. That Government's Exhibits 1, 2, 3, 6, 7, 8, and Defendant's Exhibit G, designated in paragraph 7 of said præcipe, are omitted from the foregoing transcript, for the reason that by order of this court appearing in the foregoing transcript it was ordered that copies of said exhibits be not included in this transcript, but that the originals thereof be forwarded to the Supreme Court of the United States.

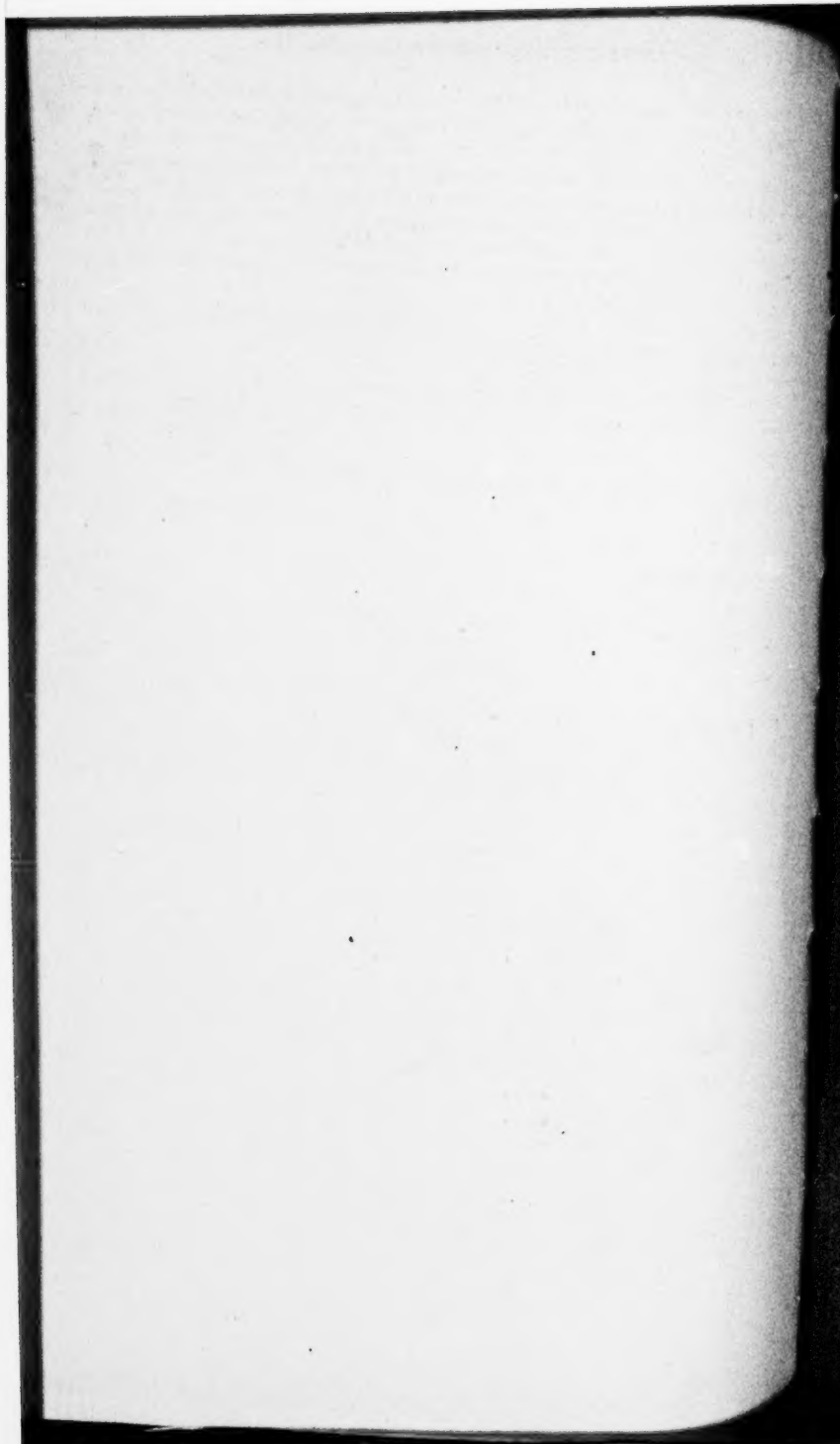
I return attached to said transcript the original citation issued in said cause, together with the proof of service thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this 20th day of April, 1917.

[Seal United States District Court, Oregon.]

G. H. MARSH, *Clerk*.

Endorsed on cover: File No. 25,949. Oregon D. C. U. S. Term No. 500. Seufert Brothers Company, appellant, vs. The United States of America, as trustee and guardian of the Confederated Tribes and Bands of the Yakima Indians and Nations, and as trustee and guardian of and ex rel. Sam Williams, and Sam Williams. File No. 25,950. Term No. 501. The United States of America, as trustee and guardian of the Confederated Tribes and Bands of the Yakima Indians and Nations, and as trustee and guardian of and ex rel. Sam Williams, and Sam Williams, appellants, vs. Seufert Brothers Company. Filed May 8th, 1917. File Nos. 25,949 and 25,950.



**In the District Court of the United States
for the District of Columbia**

SELBERT BROTHERS COMPANY,

Appellant.

vs.

**THE UNITED STATES OF AMERICA AS TRUS-
TEE AND GUARDIAN OF THE CONFEDER-
ATED TRIBES AND BANDS OF THE YAKIMA
INDIANS AND NATIONS, AND AS TRUSTEE
AND GUARDIAN OF AND EX REL SAM WIL-
LIAMS, AND SAM WILLIAMS.**

and

**THE UNITED STATES OF AMERICA AS TRUS-
TEE AND GUARDIAN OF THE CONFEDER-
ATED TRIBES AND BANDS OF THE YAKIMA
INDIANS AND NATIONS, AND AS TRUSTEE
AND GUARDIAN OF AND EX REL SAM WIL-
LIAMS, AND SAM WILLIAMS.** Appellees.

SELBERT BROTHERS COMPANY,

Appeal from the District Court of the United States
for the District of Columbia.

A. S. BENNETT and E. A. WILSON
Attorneys for Appellant.

In the Supreme Court of the United States

SEUFERT BROTHERS COMPANY,

Appellant.

vs.

**THE UNITED STATES OF AMERICA
AS TRUSTEE AND GUARDIAN OF
THE CONFEDERATED TRIBES AND
BANDS OF THE YAKIMA INDIANS
AND NATIONS AND AS TRUSTEE
AND GUARDIAN OF AN EX REL.
SAM WILLIAMS, AND SAM WILLIAMS.**

vs.

SEUFERT BROTHERS COMPANY.

STATEMENT OF THE CASE.

The most important question in this case is—

**WHETHER THE TREATY WITH THE
YAKIMA TRIBES OF INDIANS, CEDING TO**

THE UNITED STATES THE LANDS OCCUPIED BY THEM, ON THE NORTH SIDE OF THE COLUMBIA RIVER, IN THE TERRITORY OF WASHINGTON, AND RESERVE THEIR FISHING PRIVILEGES AT THEIR USUAL AND ACCUSTOMED PLACES GAVE THEM A TREATY RIGHT TO FISH, IN THE COUNTRY OF ANOTHER TRIBE, ON THE OREGON SIDE OF THE RIVER?

HISTORY OF TREATY.

The Columbia River, as this Honorable Court well knows, is one of the greatest rivers of the continent. It was and has always been, in early days, the boundary line between many different tribes of Indians along its shores. This was true of the Yakimas on the North side, and the Wascos on the South side of the river at the place in question. At the time of the treaty, the agents of the Government found the Yakima Indians residing and occupying lands entirely on the North side of the river in what was then the Territory of Washington. The Wascos and other middle Oregon tribes occupied the lands on the opposite or South side of the river.

The Government authorities dealt with each tribe (or group of tribes) for the lands

occupied by it. They found the Yakimas occupying the lands on the North side of the river. They were not occupying the South or Oregon side or making any claim to it whatever. The Government dealt with them for the lands occupied by them on the North side. It dealt exclusively and independently with the Wascos and other Middle Oregon tribes for the lands which they occupied on the South side.

The tribes on each side had their separate chiefs and independent tribal organizations. These were recognized by the government and treaties were made with them separately, and through different agencies.

The treaty in question was made with the Confederated Yakima tribes alone and had reference only to their lands on the North side of the river. It was made on the 8th day of June 1855. Governor Stevens, who was then Indian Agent for Washington Territory, acted for the government.

On the 25th of June, 1855, the government through General Palmer, who was Indian Agent for Oregon, negotiated a treaty with the Middle Oregon Indians, including the Wasco tribe, for the lands occupied by them on the South side of the river. This treaty, and not the Yakima treaty, covered the place in dispute.

This suit was brought in behalf of an alleg-

ed YAKIMA INDIAN, and his right is claimed solely under the YAKIMA treaty, (afterward the Yakima tribe was made a party.) The rights of the Wasco Indians who occupied and ceded the South side of the river are in no way involved; although the several treaties with those Indians throws much light on the questions here presented.

The treaty with the Yakimas, under consideration, after describing by metes and bounds the country ceded by the Yakima tribes, which was all on the North side of the river, the call of the boundary in question being (commencing) "at the western extremity of the big Island" (an Island in the Columbia River) between the mouths of the Umatilla River and Butler Creek, * * * * * thence down the Columbia River to midway between the mouths of White Salmon and Wind Rivers."

Reserved out of these lands a certain tract or reservation for their exclusive use, and it further provides:—

"The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said confederated tribes and bands of Indians AS ALSO THE RIGHT OF TAKING FISH AT ALL USUAL AND ACCUSTOMED PLACES IN COMMON

WITH THE CITIZENS OF THE TERRITORY; and of erecting temporary buildings for curing them, together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed lands."

(Keppler's Indian Treaties.)

It is claimed that under this clause these Yakima Indians had, and still have, the right to go across the river into the country of the Wascos, and exercise their TREATY RIGHT of fishing.

The original treaty with the Wascos and other tribes (Middle Oregon Indians) negotiated by General Palmer on the 25th of June of the same year, and which covered the South side of the river (the place of dispute) had practically the same call of boundary "commencing in the middle of the Columbia River, at the Cascade Falls and running thence southerly, etc., etc., to the headwaters of Willow Creek; thence down stream to its junction with the Columbia River, and thence *down the channel of the Columbia River to the place of beginning,*" and contained the same provision in favor of the Wasco Indians as to their country, as the Yakima treaty.

However, upon the representation of the Indian department that the right to wander so far from the reservation for fishing purposes was bad for the Indians, a new treaty was negotiated with these tribes in 1865 by which *this right of fishing by the Wascos on their side of the river was surrendered and extinguished.*

The location in question is on the South or Oregon side of the Columbia River, and the right of fishing is not the transitory right of river fishing with boats and nets, but is the right to attach permanent structures, exclusive in their nature like fish wheels TO THE LAND on the Oregon side, and to cross the land back and forth thereto.

OTHER QUESTIONS.

Besides the construction of the treaty, there are some other questions in the case, but they are of a lesser importance and unless the question already stated is decided in favor of the Plaintiff they are not important at all.

Under the original complaint the suit was brought in behalf of one Sam Williams alone, he claiming to be a Yakima Indian and alleging

his rights under the treaty. It transpired in the evidence that he was not properly a Yakima Indian at all, having been born of a Cowlitz mother in the country of the Cowlitz tribe, and having never lived with the Yakima Indians or been associated with that tribe. According to his own testimony, he had abjured all Indian ways and adopted the white man's methods of life. For twenty-one years he had lived near The Dalles on the Oregon side and had taken a white man's homestead on the Oregon side of the river.

The Honorable District Court held that the suit could not be maintained in his behalf, but over the protest of the defendant permitted an amendment bringing in the Yakima tribe, and the suit to be proceeded within their behalf. There was no allegation either in the original or amended complaint that the defendant had in any way interfered with the use of the point in question by the Yakima tribe, or with its use by any Indian except Williams.

Again the suit was brought to establish the right to fish at a certain point described as:

"That certain point situated 28.53 chains north and 12 chains west of the quarter section corner between section 1, in township 1, and section 36 in township 2, both townships north of range 13 east of the Willam-

ette Meridian in the County of Wasco, State and District of Oregon."

No other point or place was described in either the original or amended complaint. Nor was there any allegation that the Seufert Company had interfered with any Indians at any other point. The rights of the Indians to fish at any other point was in no way in issue. Whatever evidence there may have been as to Indian fishing at other points was merely incidental to the controversy over this point.

Nevertheless, the Court, while finding that the particular point described in the pleadings never was a place where the Yakima Indians fished, Opinion of Court Vol. 1, p. 55, yet of its own motion in the opinion and judgment extended the inquiry far beyond the issues made by the pleadings and proceeded to adjudicate the Yakima fishing rights for a half a mile or more above the only point in controversy, saying:

"Another feature in the controversy to be observed is that the testimony falls short of establishing the fact that the place where Williams is seeking to have his wheel located, or its immediate environment, ever was a usual and accustomed fishing place for the Indians of the Yakima confederated tribes.

* * * * *

To be particular, it is my judgment

that the right of the Yakima confederated tribes to take fish at Kum-sucks as a usual and accustomed fishing place has been established under the evidence to that part of the south shore or bank of the Columbia River beginning at the furthestmost point down stream of the removal of rock at Kum-sucks by the Government in constructing the Celilo Canal, and extending thence up stream around the point to where the shore line meets the premises of Henry or Harriet Gulick, including the place where Peter Jackson's wheel is now located. The defendant should be enjoined from exercising any pretended fishing right along or within this space."—Opinion of District Court Record, Vol. 1, p. 55.

Another interesting question involving the construction of the treaty, is as to the *treaty right* to the use of permanent appliances of an exclusive nature like fish wheels which form a permanent and exclusive obstruction and burden upon the lands of the shore owner.

The Court below held that Williams, having abjured all Indian tribal life and for twenty-one years lived independently and separately, and completely adopted the white man's citizenship and habits of life was not an Indian ward, for

whom this suit could be brought. From this portion of the decree, the Plaintiff makes a cross appeal so that the questions involved in the case are:

First. The construction of the treaty as to the treaty right of the Yakima Indians to fish outside of the country ceded by the treaty.

Second. Could the Court, over the objection of the defendant, permit an amendment virtually substituting the Yakima tribe of Indians in the place of Sam Williams as plaintiff, and involving entirely different rights and issues?

Third. Could the Court, after finding that the place claimed by Williams and described in both the original and amended complaint had never been used by the Yakima Indians as a fishing place; proceed to enter a decree as to other places never at all at issue?

Fourth. Could the Indians, (if they had any right to fish on the Oregon side at all) abandon their simple methods at the time of the treaty, and assert a *treaty right* to fish with exclusive and monopolistic contrivances, like permanent fish wheels, in front of white man's premises?

Fifth. (On the cross appeal) Was Sam Williams a ward of the government, or a Yakima Indian?

These questions were raised by a motion to dismiss the complaint under Rule 29,—a motion

to dismiss the amended complaint,—by answer to the complaint, and by due assignment of errors as to the decree in the Court below.

SPECIFICATION OF ERRORS.

First. That the said District Court erred in holding and decreeing that the treaty with the Yakima Indians, under which said suit was brought, applied to territory outside of the territory ceded by said tribe to the United States in said treaty, and in holding that the said treaty gave to said Yakima Indians fishing rights outside of the territory so ceded in said treaty and especially in the territory on the South side of the Columbia River in the State of Oregon.

Second. That said Court erred in not sustaining the Demurrer of the Defendant to the original Complaint in said action.

Third. That said District Court erred in not sustaining the Motion to dismiss said original Complaint in said action.

Fourth. In overruling the Motion to dismiss said Amended Complaint upon the ground that said Amended Complaint was not an Amended Bill, but was a substitution of a new

cause of complaint or suit and substituted entirely and wholly different plaintiffs and called into question wholly and entirely different interests from the party in whose behalf the original suit was brought.

Fifth. In overruling the Motion to dismiss the Amended Bill of Complaint in said action upon the ground that said Amended Complaint did not contain sufficient facts to constitute a valid cause of action or suit in equity against the Defendant.

Sixth. In refusing to dismiss said Amended Complaint upon the ground that the treaty between the Government and the Yakima Indians referred to in said Amended Complaint confined the said Yakima Indians to the exercise of fishing rights on the Washington side of the Columbia River, and that said treaty did not apply to the Oregon side of said river.

Seventh. That said District Court erred in the final Decree in said cause in holding and decreeing that the portion of the South bank of the Columbia River in the County of Wasco and State of Oregon, described in said Decree, was or is one of the usual and accustomed fishing places belonging to and possessed by the confederated tribes and bands of Indians known as the Yakima Nation.

Eighth. In holding and decreeing that the fishing rights and privileges reserved by said Yakima Nation and guaranteed by the Yakima

Indian treaty of June 9th, 1855, applied to the powers and privileges of the Indians in fishing at the place indicated or at any place on the South bank or shore of the Columbia River, and in failing to hold and decree that said Yakima Indian treaty did not apply to the place in question or to any part of the South bank or Oregon shore of the said Columbia River.

Ninth. That said District Court erred in holding and decreeing that the Defendants, its officers, agent, etc., were and should be enjoined from fishing at said place on the Oregon shore under the Yakima Indian treaty.

Tenth. That said District Court erred in holding, adjudging and decreeing that the Yakima Indians are not confined to their ancient and usual methods of catching fish, but are authorized to establish monopolistic devices like fish wheels on the premises of private parties and especially at said place on the Oregon shore.

Eleventh. In holding, decreeing and adjudging that said Yakima Indian treaty gave to the said Yakima Indians the right to maintain houses and buildings on the premises of the Defendant on said Oregon side of the Columbia River and to pass over and along the Defendant's said premises on the Oregon side to reach said fishing ground, and in enjoining the said Defendant from interfering therewith.

Twelfth. In holding and decreeing in said Final Decree that the rights of the Yakima In-

dian tribe generally could be adjudicated in a suit commenced by the United States on behalf of Sam Williams alone, when said Sam Williams had failed to establish that he was a Yakima Indian or a ward of the Government, and that he could claim any rights under said Yakima Indian treaty.

Thirteenth. That said Court erred in going outside of the pleadings and the prayer of the Complaint in said cause and finding and decreeing the alleged rights of the Yakima Indians at an entirely different place from the one pointed out and described in the original Complaint and in the Amended Complaint.

Fourteenth. In failing to hold, find, and decree that said Sam Williams and the Yakima Indians had no rights to fish under the treaty at the place in question on the Oregon side of the Columbia River and outside of the territory ceded in said treaty by said Yakima Indians.

Fifteenth. In failing to find, hold, and decree that the fishing rights of the Yakima Indians, reserved to them by said treaty were confined to the territory ceded by them to the United States therein.

Sixteenth. That said District Court erred in finding and holding that the Defendant, after the entering of said decree, had violated the same by fishing, himself, at one of the points mentioned in said decree and in exercising his rights to fish in common with the Indians at

said point, and in adjudging him guilty of contempt therefor, and in holding that he had a right to fish at said point, at least when not disturbing or interfering with the fishing of any Indians.

ARGUMENT

DOES THE RESERVATION OF THE RIGHT TO FISH AT ALL USUAL AND ACCUSTOMED PLACES IN COMMON WITH THE CITIZENS OF THE TERRITORY IN THE TREATY WITH THE YAKIMA INDIANS CEDING TO THE UNITED STATES THEIR POSSESSORY RIGHTS OF OCCUPANCY IN THE LAND ON THE NORTH SIDE OF THE COLUMBIA RIVER, CLAIMED AND OCCUPIED BY THEM; GIVE SAID YAKIMA INDIANS THE RIGHT TO GO OVER ON THE OREGON SIDE, IN THE COUNTRY OF ANOTHER TRIBE AND FISH FROM THAT SIDE WITH PERMANENT WHEELS ATTACHED TO THE OREGON SHORE?

The treaty in question, after ceding the lands occupied by the Yakima tribes (wholly on the North side of the river) and reserving certain lands out of the same as a reservation, and providing for the exclusive right of fishing on the part reserved proceeds—

“Also the right of taking fish at all usual and accustomed places in common with the citizens of the Territory, and of erecting temporary buildings for curing them.”

It is practically conceded that if this were a treaty between white governments, or a contract between white men, the clause in relation to fishing places, would be referred to the lands ceded, and would be a reservation as to said lands, and would not confer any rights in lands not ceded.

“This would be true undoubtedly had the two parties been citizens of equal experience and intelligence.”

Opinion of District Court in this case
(Record Vol. 1, p. 49.)

This seems so obvious from a mere reading of the treaty as to be beyond question.

It is an elementary rule which “he who runs may read” that a reservation must always be a part of the thing granted.

Heard vs. Curtis, 7 Metcalf 94.

Blackman vs. Stryker, 37 N. E. 484.

S. C. 142 N. Y. 555.

In re Narraganset 20 Rhode Island 715.

S. C. 40 At 347.

Indeed the courts have repeatedly construed this very clause as being a reservation out of the thing granted, and the government has always heretofore contended for that construction.

United States vs. Winans, 198 U. S. 371-381.

United States vs. Taylor, 3 Washington Territory 88.

Seufert vs. Olney 193 Fed. 200.

RULE OF LIBERAL CONSTRUCTION OF INDIAN TREATIES DOES NOT JUSTIFY THE CONTENTION OF RESPONDENT IN A CASE LIKE THIS.

But notwithstanding the decisions of the Courts upon this very clause and notwithstanding the plain meaning of the language between white men, the rule laid down in U. S. vs. Winans and other cases that such a treaty will be construed "as that unlettered people understood it and as justice and reason demand," is invoked to sustain the Indian claim.

But we submit to the Court that the construction asked for in this case, which seeks to make this reservation cover lands not ceded by the Yakima tribes at all—lands which were not even occupied or claimed by them at the time of the treaty—lands outside of the boundaries, fixed and recognized by the Government and the Indians alike—there on the ground, at a time when everyone knew what country was claimed by each tribe—would be carrying the rule too far, and that such a construction of Indian treaties would work untold evil—would make such treaties utterly uncertain and would make the rights of whites and Indians alike, depend, as in this case, not upon the plain wording of the treaty, but upon floating traditions, and the uncertain memory and understanding of those who were mere children at the time of the treaty, and took no direct part whatever in its making.

We assume, that it was not the intention of this Court in the Winans case to overrule the previous case of Choctaw Nation vs. U. S. 119, U. S. 1. Indeed Mr. Justice McKenna, in the opinion in the Winans case, cites the Choctaw Nation case with approval. In the latter case Mr. Justice Harlan delivering the opinion of the Court says:

“But in no case has it been adjudged that the Courts could by mere interpreta-

tion or in deference to its views as to what was right, under the circumstances, incorporate into an Indian treaty something that was inconsistent with the CLEAR IMPORT OF ITS WORDS. It has never been held that the OBVIOUS, PALPABLE MEANING OF THE WORDS OF AN INDIAN TREATY MAY BE DESTROYED.

* * * * *

"We are bound to find out the intention of the parties, by JUST RULES OF INTERPRETATION APPLIED TO THE SUBJECT MATTER, and having found that it is our duty to follow it as far as it goes and to stop where it stops."

We assume, therefore, that the language of Mr. Justice McKenna in the Winans case, and that of Mr. Justice Harlan in the Choctaw case should be read together, and that when so read together, the rule of interpretation announced is this—

"Such treaties will be construed as the Indians understood it and as justice and reason demand, but this rule will not be carried so far as to change the plain purport of the instrument or incorporate into it something that is inconsistent with the clear import of its words."

It must be remembered that the Govern-

ment, as well as the Indians were parties to this contract, that it had to be approved by the President and ratified by Congress before it became valid and effectual, and *their* meaning of the treaty, and *their* understanding of it, as well as that of the Indians is important.

We agree that no technical rules should be applied to cramp a meaning that was otherwise plain .

But after all, we submit, the Court will be governed by the language of the instrument, and by ordinary elementary rules which govern that language. Otherwise, there would be nothing for the Court to build upon,—no rule by which the language could be construed, no certainty to the contract whatever, and everything would be left to mere broad conjecture and guess work as to what the parties really understood and intended. The Court would have to legislate, to guess, what kind of a contract the parties probably would have made, and to conjecture what they might possibly have intended.

The danger of such a rule of construction could not be better illustrated than in this very case. Here, for more than sixty years after the making of the treaty it was assumed by everyone that the treaty right of the Yakima Indians did not extend into Oregon—did not go beyond the territory occupied and ceded by them. The fishing right of the Wasco tribe on the Oregon side, had, as we have seen, been extinguished in

1865 by a later treaty (Keppler's Indian Treaties, Treaty of 1865,) and it seems to have been generally conceded that after that time the Oregon side became free from Indian treaty privileges. Lands were bought and sold, and titles acquired on that theory. It is a matter of record there had been much litigation over the Yakima Indian rights to fish on the *Washington* side, but never during the entire sixty years has any right been asserted in the courts to fish on the Oregon side. During that time the Indians have constantly had the advice and counsel of a long succession of agents and of the many learned District Attorneys who have at different times represented the Government.

Now, after the participants in the making of the treaty, both white and Indian, are long since dead, and when no direct evidence as to the understanding of the parties is any longer possible it is sought to vary the natural import of the language of the treaty by traditionary evidence and the memory of a few very old men who had no part in the making of the treaty themselves and who were mere children at the time of its execution. During these years the lands on the Oregon side of the Columbia River for hundreds of miles, from Priest Rapids to the Pacific Ocean have passed into the hands of settlers and been transferred and retransferred in the ordinary course of business. We may assume that this land along the river on the Oregon side has been

bought and sold under the full belief that all Indian fishing rights across the same was extinguished by the treaty in 1865 with the Oregon Indians who occupied that side.

It is now sought after all these long years, for the first time, to assert in the Courts, that the treaty should have a construction different from its natural import, and which would give to the Yakima Indians from the North shore a greater right in the land of the Wascos on the Oregon shore than the latter tribe, which really occupied that country, has had since 1865—a construction which would unsettle the titles all along the South side of the Columbia River and burden the lands of the owners with the right of Indian fishing and the accompanying right of going back and forth across the lands of the owner and building and maintaining drying houses on the land, wherever Indian traditions or Indian evidence may seem to establish that the Yakima Indians in pre-historic times some times fished.

THE WORDING OF THE CLAUSE IN QUESTION, NOT TO BE TAKEN SEPARATELY FROM THE BALANCE OF THE TREATY, BUT SHOULD BE READ IN THE LIGHT OF THE CONTEXT AND LIMITED TO THE TERRITORY CEDED THEREIN.

In the Court below great stress was placed by the learned Attorney for the Plaintiff upon the word "all" in the phrase "all usual and accustomed places," and it is strenuously urged that the provision should be taken separately and without any reference to the context, and without any limitation to the country ceded by the treaty. That the word "all" should be given a construction as broad as the universe, and should give these tribes a right to fish anywhere, where one or more individual Indians had sometime fished.

This construction of course might extend the tribal right to Oregon, Idaho or even to Canada, if any individual Yakima Indian happened to have fished there.

This, we contend, would be a strained and unnatural construction and would be a violation *without any cause* of all ordinary rules of interpretation. The word "all" is not often used absolutely. On the contrary it generally, has a relative meaning. If a lawyer tells an expressman to go to a certain room and remove "all" the law books of another office, he does not mean *all the law books in the world*, or even all that are in the State or in the City, but, on the contrary, the word relates to the place from where they are being removed, and is limited thereby. If a farmer sends his hired man out and tells him to dig ALL the potatoes, or harvest ALL the wheat, the word relates back to

the farm, which is the subject of the orders and is limited thereby.

If we are speaking of Germany and say "all" ablebodied men were in the army, we do not mean all the men in the world but all belonging to the country of which we are speaking. If I sell a man a band of cattle and reserve "all the calves" no sensible man would contend for a moment that I meant all the calves in the world, or that I was thereby getting a right to any calves previously belonging to the other party, or belonging to a third party.

The rule of construction, that a general reservation in an instrument will be limited to the thing granted is, we submit, a simple natural rule, not a technical one. It is not confined to the English language or to legal instruments alone. It is but a corollary of the natural general principal which governs all verbal communications, whether oral or written, that "general language is limited to the subject under discussion." The rule is simple and elementary, we submit, and applies to all languages and all peoples alike. If two Germans should meet and negotiate in their tongue, and draw an instrument in their language, the rule would apply that any particular phrase of the instrument they drew must naturally, and in the absence of anything to show to the contrary, have reference to and be limited by the general subject of their contract or conversation. If two wild negroes from

the darkest belt of Africa were to come together and make a contract in their own language, the same rule would necessarily apply. This is because it is a rule of common sense without which it would be difficult if not impossible to carry on any of the ordinary transactions of life.

That this simple, universal rule of language which applies to their own tongue as well as to the tongue of the white man, must be assumed to have been understood by the Indians seems to us plain.

Even if these Indians had been as ignorant as the degraded and insect-eating tribes of the Southwest, yet they would have understood so simple and general a principle. Besides, these Indians were far from being ignorant.

The Indians who took part in making these treaties at Walla Walla were shrewd and cunning. They were not unacquainted with white ways and many of them were, in a greater or less extent, acquainted with the white language. For more than a generation, at the time of the treaty in 1855, the Hudson Bay Company and its agents, its traders, and its trappers, had been in their midst, mingling with them, hunting with them, trapping with them, and trading and dealing with them, day by day. In the later years, the missionaries also, of both the Catholic and Protestant denominations had stations distributed throughout the land.

Looking Glass, and Lawyer, and Old Joseph Chiefs of the Nez Perce and Cayuse tribes, are recognized in all North Western histories as diplomats of a high order. Pue-Pue-Mox-Mox, Chief of the Walla Wallas, was one of the great men of Indian history. Kam-i-ak-in, Chief of the Yakimas, himself was a missionary Indian who had been around the missions in his country, and lived in the mission families for years, according to history. To suppose that these men did not understand the treaty, and the boundaries between their tribes and other tribes mentioned therein, and that they would not have stipulated for it, if they were claiming anything outside of those boundaries, is unreasonable.

These treaties were not hastily drawn. The Whites and Indians were negotiating and counciling together for weeks. It was the greatest Indian gathering in the Northwest, if not the greatest ever held in America. It is said there were five-thousand Indians gathered together from the different tribes. They held many councils among themselves. They were not over awed in any way. They outnumbered the whites more than fifty to one.

The interpreters, some of whom signed the treaty, had lived among the Indians all their life. Some of them, like the McKays had Indian blood, and others were raising families of half-breed children. All of them were friendly to the

Indians. The treaties were drawn by men of the highest character. There are no names that mean more for fairness in Northwestern history than the names of Stevens and Palmer.

We must assume that these agents of the Government and these interpreters did their duty. We must suppose that they explained fully to the Indians, in their own tongue, exactly what every clause of the treaty meant.

What right have we to suppose or assume that those other men, in the past, who were charged by the Government with a solemn duty, were not as fair as the interpreters upon whom we depend. to translate the Indian evidence. What right have we to assume that these interpreters having much in common with both races, would not do their duty quite as well and justly as the interpreters of today.

We submit to the Court that the attempt to give this clause a detached meaning, and make it grant to the Indians rights entirely outside of the country ceded to the Government, and in the land of another separate tribe, is entirely without justification.

CLAUSE ALREADY CONSTRUED BY

THIS COURT AS A RESERVATION OUT OF THE THING GRANTED.

In *United States vs. Winans* to which we have already referred this Court has said—

“In other words the treaty was not a grant of rights to the Indians, but the grant of rights from them—a *RESERVATION* of those not granted”

In *United States vs. Taylor* the Supreme Court of Washington, then a Federal Territorial Court, says:—

“The Appellant, (the Government,) contends that this clause was a *reservation from the force and effect of other portions of the treaty of certain rights therein specified.* * * * *

We think the contentions of the Appellants must prevail * * * * What would the Indians intend to *reserve* to themselves by the words as also the right of taking fish at all usual and accustomed places. ”

United States vs. Taylor.

3 Wash. Terr. 88.

And Judge Rudkin in *Seufert vs. Olney*, 193 Fed. 200, says:—“It is far more likely that it intended to reserve, etc.”

These cases seem to have been overlooked by the learned District Court. If the true construction of the treaty were not so plain upon its face upon a simple reading—if every princi-

ple of construction applied by the authorities did not make it plainer, can there be any question but what these decisions and especially the language quoted from the opinion of this Court in the Winans case, directed as it was towards this very clause, establish forever that it is a reservation out of the thing granted, and therefore limited to the Territory ceded in the treaty.

The concluding words of the clause "In common with the citizens of the Territory" seems to still further strengthen this construction.

The learned District Court, it is true, dismissed these words as of no importance, but it is a part of the language of the treaty, and we submit it of some significance—not as limiting the rights of citizens to that particular locality, but as showing further that it was the *particular territory ceded* that was in the minds of the treaty makers in reserving the fishing privilege.

The decision of the learned District Court seems to be based largely upon three assumptions, all of which we respectfully submit, are hardly sustainable:

First—That it was *unimportant to the Government* at the time of making these treat-

ies that the country occupied by the different tribes should be correctly bounded and described.

Second. That the Indians themselves did not know or recognize the Columbia River as a boundary between the Yakima tribes on the North and the Wasco and other tribes on the South.

Third. That the fishing among the Indians was "in common."

IMPORTANT TO THE GOVERNMENT
TO DEAL CORRECTLY WITH EACH TRIBE
FOR THE COUNTRY OCCUPIED BY IT.

It seems, we submit, that the importance of this from the standpoint of the Government ought to be obvious. It was clearly the purpose *to extinguish the entire right of occupancy of each tribe.* This could only be done by correctly fixing the boundaries between the different tribes as then understood and recognized by them. It was useless for the Government to buy the Indian right of one tribe, or group of tribes, for lands not actually occupied or claimed by them, but which was a part of the possessions of another tribe. To do this, would leave the real Indian title to part of the lands, unsettled and

unextinguished, and pave the way for no end of trouble between the Indians and the white settlers. It was clearly the purpose to settle all claims of each tribe, and to settle them so plainly and effectually that there would be no room for contention or dispute. To illustrate—it would have done the Government no good to have purchased these lands from the Sioux or the Pawnees or the Blackfeet. Neither would it serve any good purpose to have bought any portion of lands from the Wascos which was occupied by the Yakimas. If the government should do this, it would leave the Indian right of the Yakimas to such tract unextinguished and unsettled, and would be sure to breed trouble with that tribe over the same. It therefore, surely became of the utmost importance, that they should correctly ascertain the boundaries between the different tribes and deal with each tribe as to the country claimed and occupied by it.

The agents of the Government at that time had unequalled facilities and information for ascertaining these boundaries as they were then recognized. They were there upon the ground, and had the Indian tribes present with them. Not only that, but Palmer and Stephens, the representatives of the Government, were well acquainted with the Indian tribes and their country and claims. Each had been the agent

of the Government with these Indians for years. Stephens with the Washington, and Palmer with the Oregon tribes. They had all the tribes (except the Middle Oregon Indians who were dealt with later and separately) gathered together with them at Walla Walla. It must be assumed that these boundaries, and the occupancy of the different tribes, was all talked over and fully explained to and by the Indians.

If the Yakima tribes had been occupying any lands on the Oregon side, or claiming any rights thereon, would not the Government agents have provided for the extinguishing of that right or claim? If not, they surely would have been derelict in their duty to the Government and would have left their mission and purpose partly unfulfilled.

True, the Government sometimes dealt with these tribes in groups, or confederations, when satisfactory to the Indians themselves, but in doing this, it always recognized each tribe as a separate organization, and the chief of each tribe signed the treaty for his particular tribe. Most of these groups spoke a different language from the other groups—all of them had their separate chiefs and separate tribal organizations, and each occupied a separate country.

We submit to the Court, that the action of these impartial Government agents, there upon the ground; in fixing the boundaries of the dif-

ferent tribes and defining their claims of right and occupancy, accepted also by the Indians at the time, is entitled to great weight. Their judgment there upon the ground, with the Indians gathered around them, with every means of obtaining the truth, should not be lightly pushed aside or disregarded. Is it not far more likely to be right than any conclusion which can now be reached from unsatisfactory tradition, from a partisan source, coming down by uncertain memory through the mists of years?

INDIANS DID KNOW AND RECOGNIZE THE COLUMBIA RIVER AS A BOUNDARY.

The Columbia River ranks with the Mississippi and the Missouri as one of the great rivers of the Continent. It was not only recognized by the Government agents at the time of the treaty as the boundary between the Yakimas and the Wascos, but it had been recognized as a boundary by the Indians themselves, apparently for ages.

It is a well known fact that the Indians of this continent, having no means of establishing artificial lines generally adopted some natural boundary like a mountain chain or great river wherever possible. The evidence in this case we submit, shows conclusively that this was the

case with the Columbia River. As proof of this fact we not only have the recognition of it as an established boundary between the Yakimas and Wascos by the Government agents there upon the ground, and the affirmative evidence on behalf of the defendant, but nearly every Indian witness for the Government who was examined in relation to the matter finally admitted that the Columbia River was the established boundary between the two tribes.

It is true that some of these Indians, in their direct examination, in response to grossly leading questions, asserted that the Indians "knew no boundary." But nearly every one of them on cross examination showed a perfect knowledge of the ancient boundaries of each tribe, and admitted that the Columbia River was the boundary between the Yakimas and the Wascos, just as it was ascertained by the Government and defined in the treaty.

Louis Simpson, who is one of the few Indian witnesses for the Government, who is old enough so that his memory goes back before the time of the treaty, being 82 years old, and who is a chief of one of the Yakima confederated tribes, says:

Q. Ask him how much country up there at Wish-ham his tribe had.

A. Something like in the neighborhood of ten miles up and down the river, he says, and *fishing grounds began from where the ferry boat is, there at The Dalles, on up the river.*

Q. *Ask him what tribe of Indians had the country across the river from him.*

A. *On the opposite side?*

Q. *Yes, on the opposite side, ask him what tribe of Indians had that country.*

A. *The Wasco Indians.*

Q. Ask him how far up and down the river on the Oregon side, the Wascos' country extended.

A. He says 'I think I stated before THAT THE WASCOS' FISHING GROUND BEGAN FROM THIS LONE PINE CLEAR ON UP TO CELILO.'

* * * * *

Q. Ask him if the Wasco Country went up as far as the John Day River.

A. NO. That is beyond the Deschutes you are speaking of, *that belonged to the John Day Indians, that is separate from the Wascos.*

Q. Now ask him if the John Day Indians had the country *along the Columbia River above the Deschutes.*

A. He says that they had a little country up there, separate from the Indians down this way.

Pipe Shire, another aged Indian, shows a like knowledge of ancient boundaries.

(Printed Record, Vol. 1, p. 158)

Kuckup, whose father was one of the signers of the treaty, says—

Q. Ask him if his father didn't sign the treaty as chief of the Lower Deschutes.

A. My father signed the treaty *for all them Tenino up* all I have mentioned; he signed for them all.

Q. Ask him if his tribe had the country, if they owned the country from Tenino up to the Deschutes.

A. He says, yes; that from Tenino right on up, up the Deschutes on up to Celilo and Deschutes, *that country was ours.*

Printed Record Vol. 2, p. 435.

Tom Handly, an Indian called by the plaintiff, says:

Q. When the Yakimas would come over to visit the Wascos and fish there, would they bring their horses?

A. No, sir, they didn't bring them across; they left across the creek—river, yes.

Q. Across the river?

A. Yes.

Q. *On their own side?*

A. *On their own side, yes.*

Shea Wa, another of the plaintiffs witnesses, says—

Q. You can explain it to him, but what I want to know is, if the Skein Indians claimed the country in the early day of the north bank of the Columbia River from the mouth of the Yakima down to the Big Eddy.

A. Now at your question I will say this. The Skein people didn't run clear down to this Nuch-tas.

Q. Didn't run down what?

A. They didn't come down to this Big Eddy Nuch-tas. They didn't claim that far at all.

Q. I know. That is what I thought.

A. He said the Wish-ham claimed that little spot from Nuch-tas up to Skein, and from Skein the Indians that he is from claimed up above.

Q. Tell him that all I want to know is whether the Skein Indians claimed the country from Skein up to the mouth of the Yakima on the north side of the river in an early day.

A. He says, yes, that is just the way it was, they claimed up and down from Skein on up, clear up to the points you spoke of.

Record Vol. 1, p. 262.

(Note—The Skeins or Skin-pahs and Wish-hams were two of the confederated Yakima tribes.)

Is it not plain then, from the evidence of

these Indians themselves, that they did have separate countries, and recognized boundaries, among themselves, and that the Columbia River was the boundary between the Yakima tribes on the North, and the Wascos and Deschutes on the South, and that the land on the South side of the river at this point belonged to the Wascos and that on the North to the Yakimas, and that this was well understood by the Indians.

Practically the same testimony as to boundary was given by the plaintiff's white witnesses.

Amos Underwood, who came to the country in 1852, and who was called as a witness for the Government, says—

Q. I am asking you if you don't know that the Yakima and Klickitat Indians lived on the north side of the river, that that was their country over there on the North side?

A. Yes, that was their country over on the North.

Q. And the Wasco Indians, their country was on the South side of the river, wasn't it?

A. Yes.

* * * * *

Q. They couldn't all talk back and forth. Now then, the Wascos talk a still different language, don't they, from the Klickitats and the Yakimas? The Wascos talk a still different language?

A. Yes, sir; they talk a still different lan-

guage.

Printed Record, Vol. 1 p. 125.

Gates, another old man called on behalf of plaintiff, testified—

A. Well, the Indians along the Columbia from here clear up to the British Columbia line were friendly with each other on both sides of the river. *The river was the dividing line between the Oregon and the Washington Indians.* They were friendly—crossed backwards and forwards frequently; at all times of the year, they were crossing backwards and forwards.

Printed Record Vol. 1 p. 110.

It is not necessary to allude to the testimony for the defendant upon this point, in detail. A large number of witnesses in behalf of the defendant, some of whom were old men, who came here before the treaty and all of whom were prominent and reliable citizens, testified to the same facts—that the river had always been a recognized line between the two tribes, and that the Indians in fact were always great sticklers for their respective boundaries.

So the fact that the Columbia River was a boundary between these tribes is established:

First. By the findings of the Government

agents on the ground in the early days.

Second. By the admissions of the Indians themselves.

Third. By a great number of white witnesses, some of whom were called on behalf of the Indians themselves.

Against this we have nothing but the general statements of a few of the Indians that in early days everything was in common, and there were no boundaries. These general statements were brought out in every instance by leading questions—putting the very words in the mouths of the Indian witnesses and letting them say “yes.”

They were not only contrary to all the other evidence, but were contrary to all the habits of Indian life, as shown by Indian history. No people, we submit, have been sharper contenders for boundaries than the Indians of the United States. Many wars and much litigation have arisen from their contentions among themselves and with the whites in this regard.

One of the questions involved in the case of CHOCTAW NATIONS vs. UNITED STATES, which we have already cited, was a question of boundaries, and no one can read that case without being impressed, with the pertinacity, with which the Indian mind clings to the boundaries which he believes to be his.

Now, is it not perfectly plain, despite any general statements brought out by grossly leading questions, that these Indians *did have definite boundaries*, long before the treaty, which they thoroughly understood themselves, and that the treaty followed *the exact line of boundaries which they had established themselves at this place.*

LATER TREATY WITH THE WASCOS AND OTHER OREGON TRIBES, *EXTINGUISHING THEIR FISHING ON THE OREGON SIDE*, STILL FURTHER SUPPORTS THE CONSTRUCTION OF THE TREATY FOR WHICH DEFENDANT CONTENDS.

In this treaty, made only ten years after the original treaty, the rights of the Middle Oregon Indians to fish on their side of the Columbia River were surrendered and extinguished.

Keppler's Indian Treaties.

Treaty of 1865.

The very fact that the Government, in both of its treaties with the Middle Oregon Indians was dealing with THEM exclusively, as to the lands on the South side of the Columbia River, goes a long way, it seems to us, toward showing that it was understood by the Government, and

understood by all these Indians, that these lands on the South side were exclusively occupied by the tribes of that side, and no other Indians, either had or claimed any rights on the South side of the river.

It must be remembered that the only rights which the Indians, or any Indians had in any of this country, according to settled law, was by "occupancy and possession." *Where their occupancy and possession ceased, their rights ceased.* This is too well settled to admit of the slightest controversy. A score of decisions announces the rule, which has never been questioned, that the Indian title in any of this country, was simply by occupation and possession.

Therefore, unless the North bank Indians were occupying and possessing this land on the South bank, they could have no rights there whatever, *either to cede or to reserve.*

Now, the Government was closing out this right of occupancy and possession. If the North bank Indians had been supposed to have any rights on the South side,—if they had even been claiming any rights, the Government would surely have extinguished that right.

The effect of counsel's contention and con-

struction of this treaty asked for, would be to give to these Yakima Indians, on the North side rights on the South side which the Indians WHO HAD REALLY POSSESSED AND OCCUPIED the country on the South side did not have and have not had since 1865, and the Court is expected to strain the natural and logical meaning of this treaty so as to work this unreasonable result.

It must be remembered always that *this* litigation has reference to the *land* on the Oregon side. It is not river fishing, or boat or net fishing on the river that is in question, but the right to use the land and bluffs on the Oregon side, and to establish and fasten thereto a permanent contrivance like a fish wheel and to pass over the land to get to and from the same.

CLAIM THAT THE INDIAN FISHING IN AN EARLY DAY WAS IN COMMON AND THAT THE INDIANS DID NOT RECOGNIZE INDIVIDUAL OR TRIBAL RIGHTS ENTIRELY UNFOUNDED.

A vigorous attempt was made towards the close of the trial in the Court below to establish the contention that everything in an early day

among the Indians was "in common," and that the Indians did not recognize any proprietary right—either tribal or individual, to the different fishing places, and that an Indian of any tribe could go into the country of any other tribe, and fish wherever he pleased.

This is utterly contrary to the contention on the behalf of the Indians at the first stages of the case as shown by the allegation of the Government in its own complaint.

We submit that it is unnatural and improbable upon its face. We also submit that it is not only contrary to the evidence of a score of reputable white witnesses, but that it is also disproved by the admissions of the Indian witnesses themselves.

It is true that in this case—as in the matter of Indian knowledge of boundaries,—the Indian witnesses were led in their direct evidence, to make general statements to the effect that all fishing was in common, and that no Indians had a superior right to fish in any certain place and that the individual Indian had no better right to fish in the country occupied by his own tribe than he did in the country of some other tribe. But wherever they were left to their own initiative and were separated from the leading and suggestive questions of their counsel, they invariably, inadvertently disclosed the fact that each Indian tribe and even each individual In-

dian did have an exclusive right in the particular place occupied by him, or them, and that any other Indian or any other tribe who fished in such a place, did so by permission, and subject to the paramount right of the individual or tribe occupying and claiming the same.

Louie Simpson, an Indian chief, whose testimony we have already had occasion to refer to, testifying in relation to this matter on behalf of the Indians, says:

Q. Ask him if that was Wasco Charlie's regular place to fish.

A. Yes, sir; that Lone Pine fishery was his home. That was *his fishery*, and Indians went there and fished with him. That was his home.

Q. Ask him if he means that Wasco Charlie would let other Indians come there and fish.

A. Yes, he says just what I have said.

Q. Ask him if the Wasco Indians would sometimes let the Yakimas fish all along up and down the river on the Oregon side.

A. Yes, they did. They did.

(Record Vol. 1, p. 89.)

"Their (Wish-ham) fishing grounds extended from the present ferry landing at The Dalles on up the river."

(Record, p. 90)

Again:—"The Wascos were on the opposite

side and the *Wascos' fishing grounds* extended from this Lone Pine clear up to Celilo."

(Record, p. 90)

INDIAN TOMMY say: "Right here *I have one fishing point*, right here, my own, it is my uncle's, the Chief's, fishing place."

(Record, p. 169)

Q. Now ask him if this is all fishing water. (referring to channels at Skein.)

A. He says right *there is my fishing point, my father's fishing point*, right there, right there where the white spot is.

(Record, p. 150)

Q. I will mark "A".

A. Yes, right there.

Q. Now ask him if his father's fishing point was where I have marked the letter "A".

A. Yes.

(Record p. 169-170)

And again (after testifying that he had seen Williams fishing near the point in question):

The fishing point was not his by any means. *It belonged to his wife's father and relations*, that kind of had a claim on that particular point at that time.

Q. Whose father and relations?

A. *He says the fishing point belonged to Sam William's wife's father and near relations*

at that time. The point belonged to them.

(Record p. 178)

So Tomar Handly, being asked about the fishing point at Choke Cherry Point, about half a mile above the point in question, says:

A. Old man. One old man—he is dead—long time he died—*that is his place*, fishing place there.

(Printed Record Vol. 1, Page 139.)

And again—

Q. That was a good fishing place, was it?

A. That is the only one place; he fished there, that old man; he used to fish.

Q. *That was his fishing place?*

A. *Yes, sir.*

(Printed Record Vol. 1, p. 139)

Q. Does each Indian have a fishing place?

A. *Oh, yes, each one. When old man died then his son fished there.*

Q. *His son takes the place?*

A. *Takes the place, yes.*

And Again—

Q. Where was your fishing place?

A. Away up; Tenino, little village, Wasco. Big Eddy they call it this time.

Q. Big Eddy?

A. Yes. That place that called Wasco; right there; where Big Eddy is.

(Printed Record, Page 140, Vol. 1.)

And again in reference to the point in question:

Q. Yes. And there would be about fifty Wasco Indians fishing there, would there?

A. Oh, Yes; sometime; yes, they fished that many, sometime yes.

Q. Then you claim that besides that the Yakima Indians would come across there and fish?

A. Yes, sir.

Q. *That was because they were intermarried, was it?*

A. Yes, sometimes by marriage; some Indian relations, you know.

Q. Yes, some Indian relatives.

A. Yes.

Q. *And when they would come over there, the Wascos would let them fish?*

A. Yes, sir

Q. *Let them have their places for a while?*

A. Yes, let them have their places.

(Printed Record Vol. 1, p. 141)

So Pannawinch, another Indian, testifies:

Q. Ask him if his tribe had a fishing place over there by Wish-ham.

A. He says *he had a fishing place along there at Wish-ham.*

So, Mrs. Gulick, after testifying that this

was her brother's (Wasco Charlie's) fishing place, and that Sam Williams came over there sometimes and fished, said:

Q. Did your brother object to his fishing there?

A. No, sir.

Q. Why not?

A. *The reason why he didn't object of him fishing there because my brother and Sam Williams were good friends and relatives.*

(Record Vol. 1, p. 292)

Jake Thomas, another Indian witness for the plaintiff, testified:

A. Well, there were Indians from Washington side, what they called the Wish-hams, crossed over to fish, and also the Wasco tribe.

Q. What were their relations?

A. Yes, they were friends and relations both, and married into each other; and they were *allowed* to come there each way, both ways.

Q. Both ways?

A. Yes. They were welcome there whenever they crossed.

(Record Vol. 2, P. 368)

This Indian was a full blooded Wasco Indian. (Record Page 367.) It seems that as such Wasco Indian he at one time claimed the point

in question, and *sold* it to Wasco Charlie.

Q. When did you sell out to Wasco Charlie?

A. Well, it was some—well, before I left. I don't know what time exactly.

Q. Did you just sell your house to him, or *did you sell the fishing place, too?*

A. *The fishing place.*

* * * * *

Q. How long had you owned that place?

A. *Oh, I owned it four or five years, I think*

Q. Before you sold it to Wasco Charlie?

A. Yes.

(Record Vol. 2, P. 372.)

Still another Indian witness for the plaintiff, Charles Wannassay, testified:

A. Yes, sir. They have Indian law, you know. *I can go and fish in your ground, and I fish in your ground, and I ask you, yes, you can go and fish.*

(Record Vol. 2, Page 380)

Now, can anyone doubt in the face of the admissions of these Indian themselves, that each tribe and each individual Indian did have a place which he, or they, claimed to own, and which they could hand down from one generation to another, and could buy and sell, and to

which their exclusive right was recognized?

No doubt it was true that when one Indian went away and left his place, (if they ever did), some other Indian could come and fish until he came back and claimed it. But that did not interfere with the fact that he *owned the place* and could come and take possession of it any time he wanted to.

Some of the white witnesses, who were called on behalf of the Indians, testified to the same thing. Jensen, who is a white man, but who has an Indian wife (who, by the way, is an allottee on the Yakima Reserve) testifies:

Q. You say that each Indian would have a place *that he claimed to own as a fishing place?*

A. Yes, *that is his family*. I know this particularly at Wish-ham, because I was there a number of times and got fish and I have given the Indians a quarter just for the amusement of fishing in their places to get a net.

Q. You would pay the Indians for the privilege of fishing in their place?

A. Yes.

Q. And these places, where they handed down from father to son, they were, weren't they?

A. That was the way I understood it, yes, that is the way my wife told me.

Q. And, of course, if one of these Indians went away and left the place, some other Indian could fish there until he came and claimed it again.

A. That is the way I understood it.
Record Vol. 1 P. 218-219.

Amos Underwood, an aged white man, who came to the country in a very early day, and a witness for the Indians testified:

“Q. Did you know the customs of the Indians at the time you went there, as to whether or not they observed the boundaries, such as we designate now, the North bank and the South bank?

A. Well, I kind of believe the idea was, kind of tribes that had—whether they got it by possession or how—but they would go about the same place every year and fish there.”

Record Vol. 1 P. 121.

Q. I am asking you if you don't know that the Yakima and Klickitat Indians lived on the North side of the river, and that that was their country over there on the North bank?

A. *Yes, that was their country, over on the North.*

Q. And the Wasco Indians, their country was on the South side of the river wasn't it?

A. Yes.

Record Vol. 1 P. 125.

And Gates, another old man, testifying in relation to a point on the Oregon side, says:

Q. That was the usual Wasco fishing place, was it?

A. Oh, yes. Yes, sir.

Q. That was where the Wascos usually fished when the water was right?

A. It was owing to the stage of water. It was called the earliest fishing there on the river.

Q. And sometimes the other Indians would come over and visit them?

A. Yes, sir.

Q. And when they would come over to visit them, you think sometimes they would fish there.

A. Oh, I think so.

Q. You don't know about that?

A. I don't know about that.

(Record Vol. 1, P. 112.)

To the same effect was the testimony on behalf of the defendant.

George Snipes, an old settler who came to The Dalles in 1853, then a full grown young man, says:

"I know that the Oregon Indians fished on this side, and the others were supposed to fish on the other side."

(Record Vol. 2, P. 485)

Q. Did you ever know of their coming over and fishing?

A. Never did.

Q. Were you up fishing frequently there?

A. I went up quite often.

Q. And did you ever know of the Wascos or Warm Springs Indians going across the river and fishing on the other side?

A. I did not.

(Record Vol. 2, P. 485.)

To the same effect was the testimony of Ed Crate and John Crate, sons of an old Hudson Bay man, who came to the neighborhood in 1849 or 1850.

Gulick, who is married to an Indian woman but who seems to be rather an intelligent and reliable man, says:

"The Oregon Indians have always fished on the Oregon side and the Washington Indians on the Washington side.

(Record Vol. 2, P. 443.)

T. J. Seufert, who is a brother of F. A. Seufert, but who has had no financial interests in the Company for the last ten years, but who prior to that time had perhaps better opportunities to observe the habits of the Indians than

any other witness, testifies on cross examination by the United States Attorney:

Q. Now, I would like to know what you base your opinion as to the Washington Indians only fishing on the Washington side and the Oregon Indians on the Oregon side.

A. Well, I never saw them over there. I was back and forth, and they would always fish,—when I was at Celilo in the Fall buying fish where they caught fish heavily, the Washington Indians would bring fish over, but the Oregon Indians would never go over there, and they would continually recognize their place,—for instance, if an Indian came in I would say 'Where is Dr. Bill's fish today?',—'Well, Dr. Bill is not fishing on his station, the water is too high for him,' and if another fellow wouldn't fish, I would ask why he would not,—'Well he wasn't fishing because the water was too high for the fish,'.

Q. But when the water wasn't too high, could anyone else go there and fish at that place?

A. *No, they always fished their own stations.*

Q. Suppose one family was fishing at a point in the river and they had finished with their supply?

A. Well, they never finished with their supply. You never saw an Indian that ever got enough.

Q. They just continually fished at one point?

A. They just continually kept going. That was all there was to it. They never could dry enough. If there was one, they probably would barter out that right to another, and they were always in the barter and trade for fishing places.

Q. *The family, they always retained possession of that fishing point?*

A. Yes.

Q. Who of the family were allowed to fish there?

A. Well, I suppose anybody that was connected with their own family, father and son, likes of that.

Q. Only the immediate relatives?

A. Only the immediate relatives.

Q. Well, could friends fish at this family place?

A. Well, if a friend came along and they allowed him to fish, it was with their consent.

Q. So their friends could fish?

A. If they were not fishing or for an reason were going to town, or anything of that kind, they might allow a friend to fish. They have done that, but they would always recognize that as their place.

(Record P. 662-663.)

To the same effect is the testimony of Crawford, a farmer and a member of the Washington

Legislature, who has long lived in the immediate vicinity, and

Robert Gilmore, who was raised in the neighborhood and whose father was for many years, until his death, a justice of the peace in that township on the Washington side; and had much to do with Indian affairs. Leo Brune, a farmer living in the immediate vicinity of the Yakima fishing place on the Washington side, and very familiar with the Indian tribes and habits; Guy Whipple, Henry Wickman, Mrs. Jennie Wellingham, Peter Bruno, a full blooded Indian, and Charles Switzler, and a number of others testified substantially to the same facts.

Unless all these witnesses testified absolutely falsely, each tribe of Indians, and even each particular family had their exclusive fishing place which they owned. But, as we have seen, their testimony is also corroborated by the admission of all these Indian witnesses themselves.

ADMISSION OF EXCLUSIVE INDIAN OWNERSHIP IN PLAINTIFF'S COMPLAINT CONCLUSIVE.

Besides all this evidence that the fishing was not, and never had been, in common, we have the solemn admission of the Government itself

Subdivision 5, on page five, of the ori-

ginal Complaint, of the Plaintiff, is as follows:—

“That from time immemorial, it has been and now is a usage and custom among the Indians of the Yakima nations and of other Indian bands and tribes fishing in and along the Columbia River, which IS WELL KNOWN AND UNIVERSALLY OBSERVED, as follows:—to-wit: That any Indian of any of the tribes and bands of Indians fishing in and along the Columbia River, who desires to acquire any particular place for taking fish, might so acquire THE EXCLUSIVE RIGHTS AND PRIVILEGES TO FISH AT A PARTICULAR POINT, by occupying and using the same, provided such uses and occupation do not interfere with the rights of any other party who had acquired prior possession of said particular fishing place; that upon said prior acquisition, possession, and uses, the particular fishing place BECAME THE ACTUAL PROPERTY OF ITS POSSESSOR WHO THEREUPON HAD THE EXCLUSIVE RIGHT AND PRIVILEGE OF FISHING AT SAID POINT, until such time as the possessor thereof OPENLY AND NOTORIOUSLY ABANDONED THE SAME, TRANSFERRED IT BY SUFFERANCE TO A MEMBER OF HIS FAMILY, or another, or BEQUEATHED THE SAID RIGHTS AND PRIVILEGES AWAY AT HIS DEATH.”

(Printed Record, Vol. 1, p. 4)

And the same was carried into the Amend-

ed Complaint in numbered paragraph VI.
(Printed Record, Vol. 1, P. 25.)

We submit that Plaintiff ought not to be permitted to repudiate its own deliberate allegation and thus play fast and loose in the cause.

If it is true that EACH INDIVIDUAL INDIAN AND EACH INDIAN FAMILY HAD ITS EXCLUSIVE PLACE TO FISH, as is solemnly alleged on oath in the pleadings, and established by the overwhelming testimony, then it would be utterly unreasonable to suppose that this custom did not extend to the TRIBES as well as the FAMILIES.

If these Indians were so tenacious of their particular fishing places, and of their ownership therein, that they claimed and held an "exclusive right" to fish at those places which they could lose only by complete and "notorious abandonment," as alleged in the Complaint, and as fully shown by the evidence? Is it possible we say, that such ownership and such rights did not extend to the TRIBE as well as the families? Is it possible that the Indians who did not recognize the right of another Indian EVEN OF THEIR OWN TRIBE, to come and fish at his

place without permission, would recognize the right of SOME OTHER TRIBE, living in another country and having fishing grounds in another place, to come right into their own dooryard, as it were, and in front of their own village, and occupy the fishing places owned and possessed by their own Indians?

Is it not clear that if these individual members of the tribe and their sub-families, had fishing places which they owned, and where they had the exclusive right to fish, that these rights would extend to the tribes of which the individuals were only members? How could one tribe go across the river to the fishing place of another tribe and fish there without interfering with the rights of THE INDIVIDUAL INDIANS OF THAT other tribe?

In view of all this evidence and of plaintiff's solemn allegations in its pleadings, it seems to us that all claim that the Indian fishing in an early day was "in common" and that any Indian, or tribe of Indians, had a right to go wherever he pleased and fish, must be absolutely abandoned, and that we may take it as established that each Indian tribe, and down to each Indian family and each individual Indian had their own place to fish, and that if any other indian, or tribes of Indians came there to fish, it was by reason of the friendly permission of the tribe or individual occupying that place. No doubt the

Indians of the different tribes did visit back and forth and sometimes intermarried. This has always been true, we submit, with all the Indian tribes in America, but that did not in any way interfere with their tribal rights or tribal organization.

Anywhere along the border there is much intermarriage between the races of white men,—between our people and the Canadians,—between the French and the English, and even between the French and Germans. But no one would contend that this affected the distinct national entity. It may possibly be that in some cases individual Indians, by intermarriage back and forth, became in such relation that they were, AS INDIVIDUALS, sometimes permitted to fish at the fishing places and in the country of other tribes.

But, if a Yakima Indian were permitted to do this, in the country of the Wascos, by reason of *some relation with the Wascos*, that would not be by virtue of his relations with the Yakima tribe, but by virtue of his relation with the Wasco tribe, and he could not carry that individual privilege over to his tribe and make the fishing place in the country of some other tribe,
A YAKIMA FISHING PLACE.

*DID YAKIMA INDIANS EVER FISH
AT THE POINT IN QUESTION?*

At the trial a great amount of evidence was offered pro and con, as to whether any Yakima Indians had ever crossed over and fished at this place.

We shall not attempt to analyze this testimony or discuss it at length.

The testimony is largely traditionary and inferential. Only a few witnesses on each side were old enough so that their direct memory went back prior to the time of the treaty. These witnesses were generally mere children at the time of the treaty.

Their evidence was very conflicting. The old Indian witnesses testifying that the Yakimas did fish sometimes on the Oregon side and the witnesses for the defendant that they never did.

We do not think that the construction of this treaty ought to be left to depend upon such uncertain memory or shadowy traditions.

Neither the memory or the truthfulness of the Indian witnesses can be relied upon.

These Indians live in the present. They keep no record of the past, and when a thing is gone, it passes from their mind. The past to them is a dream and their memory of it is a hazy vision. They are like an old man trying

to call up the visions of his childhood. The striking features of a few striking incidents, perhaps remain, but some incidents are gone entirely and only a fragment is preserved of those that remain. Under these conditions, legends and traditions and "fairy stories" are woven in with the shadowy memory of facts. It is impossible, apparently, for them to distinguish between what they have heard and talked, and what they know. Under such conditions what memory they have is distorted and, affected by their partisanship, their wishes and their desires. They are like children gazing into the glowing coals of a burning fire, or into the changing clouds in the sky. They wish to see a castle and a castle is in the fire. They wish to see a Company of chariots and the chariots are in the clouds.

The uncertainty of their memory is illustrated in the evidence.

WALLUATUM, who claims to be over ninety years old, does not remember of Dr. McLaughlin, although Dr. McLaughlin must have been the most striking figure in Indian life in the whole Northwest when he was a young man and dominated the Indian tribes with a hand of iron. His name in those days must have been a familiar word in every Indian household. Yet, this Indian had not the slightest memory that such a man ever existed. He does not re-

member Grant and Sheridan, although both of these men were striking figures in the border warfare with the Indians in those days.

He did not even remember Major Haller, although Major Haller commanded the white troops at The Dalles, within a few miles of where Walluatum claims to have been born and lived, and was in command of the white soldiers most of the time, during the wars of 1855, 1856, in the very country where Walluatum was then living.

Another old Indian, and one of the most intelligent called on the stand, could not remember the battle of the Blockhouse, at the Cascade Locks, and the accompanying massacre, although it occurred only forty or forty-five miles from where he was then living, and he must have been a full grown man of mature years, and that incident was one that must have stirred the heart of every Indian in the country and was a thing which one would suppose an Indian would remember longer than anything else in the world.

Another old Indian thinks that he was at the council where the Yakima treaty was signed, and that it was held right close to the Columbia River and within a mile of its shores, and that Governor Stevens was the man who made the treaty.

As a matter of fact, no treaty was ever made at this point at all. The Yakima treaty was made at Walla Walla, and the treaty with the Wascos (to which this man's tribe was not a party,) was made by Palmer alone, and was negotiated and signed six or eight miles from the Columbia River, on Three Mile Creek, where the upper Dufur road crosses the creek.

Again, to show how utterly unreliable this testimony is:—

KUCK-UP claims to have seen GEORGE MEN-NIOCHT fish on this point with a dip-net.

(Printed Record, Vol. 2, P. 433)

GEORGE MENNIOCHT, himself, says that he never fished there and never swung a dip-net in his life.

(Printed Record, Vol. 1, P. 311.)

JERRY BRUNO, another Indian witness, for the Government, says that he saw GEORGE WATERS fish at this point.

(Printed Record, Vol. 2, P. 414.)

WATERS says he never fished there in his life.

(Printed Record Vol. 1, P. 81)

A number of these Indians testified positively that they have seen SAM WILLIAMS fish it with a dip-net.

Witnesses for the Defendant, who were in a position to know, testify that Sam Williams never did fish there with a dip-net, but that his fishing was done with a gill-net.

"Sam Williams came and fished there in 1908, and 1909, fished with a gill-net, never knew or heard of him fishing with a dip-net."

(Frank Seufert Jr. Rec. Vol. 2, p. 558)

"I never knew Sam Williams to fish there with a dip-net."

(F. A. Seufert Sr. Record Vol. 2 P. 618)

And SAM WILLIAMS HIMSELF, testifies positively that HE NEVER DID FISH WITH A DIP-NET or in any way, except with a gill-net and wheel.

"Q. Before you fished at Three Mile with a scow fish wheel, how did you fish, Sam?

A. Gill-net

Q. DID YOU EVER FISH ANY OTHER WAY?

A. No, I didn't fish any way ONLY JUST GILL-NET, in the first place. The first time, 1906, 1907, 1908, fish with gill-net."

(Printed Record Vol. 1, P. 70)

FISHING MUST HAVE BEEN "TRIBAL"
RATHER THAN "INDIVIDUAL" TO GIVE A

TRIBAL FISHING RIGHT UNDER THE TREATY.

We submit again to the Court that the mere fishing by individual Yakima Indians in the country of the Wascos, which was permitted either expressly or tacitly on account of inter-marriage or occasional visiting or friendly relations of the individual with the Wasco tribe, could not possibly give the whole Yakima tribe a right to fish in the country of the Wascos on the Oregon shore under the treaty.

CLAIM OF EQUITY ON THE PART OF THE INDIANS BECAUSE OF THE EXTENT OF TERRITORY GRANTED TO THE GOVERNMENT.

Much stress was placed, in the argument on behalf of the Indians in the Court below, upon the extent of territory ceded by the treaty. It was claimed, and possibly will be claimed here, that because they ceded to the United States their right to a large domain, that therefore, they should have a right, as was said in the brief of the learned attorneys in the District Court, to go "five hundred yards further" and in the country of another tribe and there exercise the right of fishing.

It does not seem that the extent of the territory claimed by these Indians, or the fairness or unfairness of the consideration, ought to in

any way enter into the decision of this question.

But we submit to the Court that the consideration which they received for their loose and uncertain claim of occupancy, was entirely fair and adequate.

It is true that the country to which the Indian right was ceded by this tribe was a considerable one, but at the time of the treaty their occupancy of the territory was so precarious that their claim was little more than a shadow.

According to statistics, there were in the entire territories of Oregon and Washington at the time of the treaty about 30,000 Indians, including men, women and children, and the territory covered by these two states was 166,000 square miles. This was about five and a half square miles to every Indian—man, woman and child.

Of course, their occupancy of such quantities of land could only be by scattered and occasional visits.

At the time of the treaty, their right of occupancy even, was disputed and denied.

For many years the Hudson Bay Company and the American Fur Company had been as much in possession and occupancy of the land as were the Indians. They had roamed over it and used it for fishing and hunting in the same way, and for the latter purpose to a much greater extent than the Indians. They did this as a matter of right, not asking the Indians permis-

sion, and defending their possession by armed force against all the Indian attacks.

Besides this, at the time of the treaty, the emigrants from the eastern and middle states, and the misionaries from all over the world had established their homes and their stations, to a greater or less extent, all over the entire country. The United States had passed laws, prior to this treaty, granting donation claims anywhere in the country, surveyed or unsurveyed, wherever the enterprising whitemen might decide to settle, and without regard to any Indian claim. The Willamette Valley was dotted with these claims. This was also true of the hills and valleys of the State of Washington. Right at The Dalles, there were forts and missionary stations, and donation claims. All the best of the country from The Dalles to Tygh Valley, along the streams, had been taken by the settlers.

So that the occupation and possession by the Indians was, at the best, a divided one, and likely to be disturbed and destroyed by the settlers at any time. Such an occupancy was rather a poor and precarious title.

We do not see that the Indians gained any moral right to this vast territory by roaming over it occasionally, on a hunting or fishing trip or visiting from one to the other.

Neither did the character of their original occupancy, give them any peculiar right. They were not the first race of people who had possessed the country in a similar way.

The pre-historic mounds of the Atlantic states; the cliff dwellings and ancient ruins of Colorado, Arizona and New Mexico; show that this whole country was occupied at some time by another and entirely different people.

It is not to be supposed that the present race of Indians ever purchased any rights from them, but it must be assumed that they conquered the country from the earlier inhabitants by the strong hand and without regard to right. Their title, or claim of title, had no better or higher basis than that of conquering force in the beginning, and was only held by a transient, scattered and occasional occupancy.

It was said in the brief of the learned attorneys for the Plaintiff in the Court below that the Government has always discouraged the settling upon Indian lands until the Indian title had been extinguished. This may have been true of the territory east of the Rocky Mountains, but it certainly was not true of Oregon and Washington. The donation law was passed by Congress in 1850, five years before these treaties. At that time there had been no extinguishment of Indian titles either in Oregon or Washington. The expressed purpose of the donation law

was to encourage settlers to occupy the land, without regard to the Indian claim.

It is entirely settled in this country that the title to all lands is in the Government, and that the Indian claim or title, if one wishes to call it such, was only a sort of a squatter's right, by possession and occupancy.

Under these conditions then, and with nothing but the roving occupancy to sustain them, and with this precarious title, these Indians were virtually QUIT CLAIMING to the United States.

In return for this precarious and uncertain possessory right, they got by the treaty reservation, a perfect and secure title forever to a tract of land sixty-five miles wide by thirty-five miles long, and containing over 2000 sections, or square miles, of the richest lands in the fertile valley of the Yakima.

There were then about 3000 of these Yakima Indians, and they were therefore getting a good title to over 400 acres of this rich and fertile land to every Indian—man woman and child.

This was far better than the Government has ever offered to the average frontier family who goes out and takes a homestead upon Government land.

In addition to this, they were getting a con-

siderable sum of money in cash and were secured the payment of considerable annuities and provisions for schools, teachers, farming implements, horses, and cattle, all at the expense of the Government. *And they were made free from all taxes to support the State or Government.*

We submit to the Court in all fairness that they got full value for the precarious and uncertain possessory right which they were ceding away.

We think that the Yakima Reservation is probably the richest reservation in the United States. All of these Indians who have had any industry whatever, have become prosperous and rich. Indeed, a mere allotment of this rich land upon the reservation made a man well-to-do.

It has developed from the testimony in this case, that these Indians are not only farmers but stock raisers and have herds of cattle, and horses, and sheep.

In describing them we might well change the old lines to read thus:

“Lo, the ‘rich’ Indian, whose once untutored
race,
Farms lands galore in many a fertile place.
Has sheep and cattle on a hundred hills,
And now with white men, shares the toiling
wheels and mills.”

It seems to us that this Court may well assume that the Government has dealt,—as it clearly has,—both justly and liberally with these Indians, and that we may fairly ask for a con-

struction of this treaty according to the natural import of its language, without fear that the Indians did not drive a shrewd bargain in its negotiation, and get everything to which they were entitled.

THE INDIAN RIGHT TO FISH UNDER THE TREATY DOES NOT GIVE THE RIGHT TO ATTACH MONOPOLISTIC AND EXCLUSIVE CONTRIVANCES LIKE WHEELS TO THE SHORE IN FRONT OF THE OWNER'S LAND, AND THEREBY TAKE EXCLUSIVE POSSESSION OF THAT PART OF THE SHORE.

Upon this question we distinguish between the peculiar treaty right and the right of an ordinary citizen of the state.

It seemed to be, in the mind of the Court below, that our contention would deprive the Indians of the right of advancement. We do not contend for anything that would have that effect.

As a citizen, the Indian has, and ought to have, the same right to advance and adopt new methods and new inventions as any other citizen, or as any other white man. But this right as a citizen ought to be, and we think would be, subject to the same limitations as a white man.

On the other hand, he has under the treaty certain special rights which are greater than the rights of the white man, and which burden the lands belonging to the shore owner to a far greater degree than the rights of an ordinary citizen. This latter right under the treaty, we submit to the Court, ought not to be subject to change in any way which would add to the burden of the shore owners.

When the Indian undertakes to change from a simple dip-net to enormous and permanent fixtures, like fish wheels, and anchor these in front of a man's land, thereby shutting off the access to the shore, and establishing a complete monopoly as to that part of the shore; and to keep it there permanently from day to day, and month to month, that is, we submit, a greater burden upon the shore owner than is guaranteed to the Indians by the treaty.

We submit that the Indian right to fish under the treaty; as contra-distinguished from his right as a mere citizen, does not and ought not to extend beyond the ordinary methods in use by the Indians at the time of the treaty, or such other methods as would not substantially increase the burden upon the lands of the shore owners.

We understand this to be the doctrine expressed in the language of the United States

Supreme Court in *Winans vs. United States*, and by the Supreme Court of Washington Territory in *Taylor vs. United States*, and in the opinion of Judge Rudkin in the case of *Seufert vs. Olney*.

"In the actual taking of fish, white men may not be confined to a spear or crude net, but it does not follow that they may construct and use a device *which gives them exclusive possession of fishing places, as it is admitted a fish wheel does.*"

(U. S. vs. *Winans* 198 U. S. 371)

In the *United States vs. Taylor*, Third Washington Territory 97, this seems to have been the contention of the Government, and the Court in its opinion says:—

"It will be seen by the statement of facts above set out, that at the time this treaty was made, there existed within the territory, which was the subject matter of the treaty, certain ancient fisheries which had for generations been used as such by said Indians, who had certain well defined habits and methods connected with such use. And it is contended on part of the appellant (Government) that the effect of the words above quoted was to reserve to the Indians the right to enjoy all of these fisheries as *they had heretofore.*

Again—

"But when you take into consideration the facts disclosed by this record, and the further fact, which the Court knows as a

matter of common knowledge, that these Indians were always tenacious in adhering to past customs and traditions, we think the contention of appellant must prevail, as we think it much more natural that these Indians should have desired to preserve as fully as possible a right then, and for a long time before, enjoyed by them, rather than to have provided for a right to be enjoyed *in unknown ways and under new conditions* even though such new rights might possibly be of more avail than the old.

So in *Seufert vs. Olney*, 193 Fed. 202, it is said:

"It is far more likely that they intend to reserve something they already understood and something they already enjoyed rather than to bargain for something they did not understand and for which they did not care."

And again on Page 203—

"Under modern methods and modern conditions that right *cannot be enjoyed in common*. Where fish are caught in fixed appliances, such as in wheels or in traps, the person maintaining the wheel or trap must necessarily have the exclusive possession of the ground or water occupied by his appliances."

So, we contend that if the Indian undertakes to *fish under the treaty*, he must confine himself substantially to methods known at the time of the treaty, and which do not increase

the burden of the shore owners and are not exclusive in their nature.

If on the other hand, he undertakes to exercise his rights as a citizen, he may use any improved or advanced method which any other citizen may use, but in doing so he acts under the state laws, and subject to the state's limitations, and cannot, of course, attach a permanent obstruction upon the land of a private owner.

Of course, it is plain that in this case it is only the *treaty right* that can be asserted, if any right can be asserted at all. Neither Sam Williams, living on a homestead in the State of Oregon, nor the Yakima Indian tribe, could come into this Court to establish his, or their, rights to fish as a mere citizen of the State of Oregon under the laws of the State of Oregon.

Indeed this proceeding is not founded, and could not be founded, upon any such contention.

As mere citizens under the State law, it would be necessary to have a license before any of the parties could fish at all, and there is no claim that any of the parties, for whose benefit this suit is brought, have such a license. ,

**SAM WILLIAMS NOT A WARD OF THE
GOVERNMENT AND NOT A YAKIMA IN-
DIAN.**

As has already been called to the attention of the Court, it was held and adjudged in the Court below that Sam Williams was not a ward of the Government so as to justify the bringing of this suit in his behalf. The Court also found that the particular point claimed by him never had been a Yakima fishing place.

From these holdings of the Court, the plaintiff in the Court below makes a cross appeal.

The ground upon which the District Court reached this decision was that Sam Williams, having adopted the habits of civilized life and broken off all tribal relations with the Yakima Indians, (if he ever had any) and lived for twenty-one years independent and separately in another state (as was conceded at the trial) could not be considered as a ward of the Government for whom this action could be sustained.

The testimony shows, we think, that he never was properly a Yakima Indian, and never belonged to any of the confederated tribes. His only relation to that tribe was based on the fact that his father had once belonged to it. He was born of a Cowlitz mother at a time when his father seems to have been associated with that tribe, and his father seems to have remained with the Cowlitz tribe until he was drowned in their country when Williams was a small boy.

He was raised in the Cowlitz tribe, remaining there with his mother until ne reached his manhood, when he commenced fishing along up the Columbia River, and finally reached The Dalles where he has ever since remained.

(Record Vol. 1 p. 75, Vol. 2, p. 440.)

There was no testimony that he had ever resided at any time with any of the Yakima Indians or affiliated with any of its tribes (the country of the Cowlitz tribe was on the lower Columbia River on the other side of the Cascade Mountains, and more than a hundred miles from the Yakima country.)

The findings of the Court in this regard are best expressed in the language of the Court when this same question came before it for the second time——Federal———:

“He had disassociated himself from his tribe, had departed from the reservation of his adoption and has lived for twenty-one years among civilized people, and off his reservation; has taken up civilized life and has entered a homestead as all citizens are entitled to under the Act, and it is hardly possible to conceive a condition that would more completely impose upon him the status of a citizen and evidences a more perfect waiver of all dependence for affording him redress upon the Government in the capacity of a guardian of one acting in legal disability.”

See same case in Circuit Court of Appeals, U. S. as Guardian and Trustee of Sam Williams vs Seufert Bros. Co. et al, 252 Fed., p. 51.

It is urged by the cross appellant, however, he should be held as a ward of the Government in relation to his property on the Oregon side, because he still has an allotment on the Yakima Reservation. We submit, however, that that fact alone does not make him a ward of the Government or even a Yakima Indian.

Numerous cases were cited in the Court below and in the Circuit Court of Appeals, and we presume the same cases will be cited here.

It seems apparent, however, that these authorities do not reach this question, and are not in point.

They are generally cases where the question involved was AS TO TRUST ALLOTMENTS, or as to the right of the Government to PREVENT TRAFFIC WITH INDIANS IN INTOXICATING LIQUORS; and it was held that the Government had BY EXPRESS LEGISLATION retained control in this regard, even when the Indian had been made, in other regards, a full citizen.

To the former of these two cases (allotment cases) belong the cases of

Tiger vs. West, Com. 221 U. S. 286.

U. S. vs. Gray, 201, Fed. 291.

U. S. Rechert 188 U. S. 432-47, Fed. 546.

To the latter (liquor cases) belong the cases of

Farrel vs. U. S. 110 Fed. 942.

- U. S. vs. Perrill 232 U. S. 478-58 Fd 694
U.S. vs. Sandoval 231 U.S. 28-58 Fd 107
U. S. vs. 40 gallons of whiskey 108 U.
S. 491-27 Fed. 484.
U. S. vs. Nice 241 U. S. 591-60 Fed. 194.

Much stress was placed by the learned attorney for the Plaintiff in Error, upon the case of U. S. vs. Nice.

But that case was a prosecution for SELLING LIQUOR TO AN INDIAN—a member of the Sioux tribe, and apparently living on the reservation.—There was nothing whatever to show that he had separated from his tribe or had adopted the habits of civilized life.

The question in that case was, whether the MERE FACT OF ALLOTMENT, completely absolved the tribal relation of an Indian who WAS STILL LIVING ON THE RESERVATION and still affiliated with the tribe, so that the Government could no longer regulate the sale of intoxicating liquors to such Indian.

The Court held that it did not; and, in that regard overruled the previous cases of U. S. vs. Heff, 197 U. S. 488.

But the Court in the Nice Case was not called upon to, and did not pass upon the status of an Indian who HAD LEFT THE TRIBE PERMANENTLY AND ESTABLISHED A

SEPARATE HOME AND ADOPTED THE HABITS OF CIVILIZED LIFE.

On the contrary, the decision was based upon the necessity of liquor regulation by the Government and upon the consideration of statutory provisions which obviously, have no bearing upon the case of an Indian, who has renounced his tribal affiliations, and accepted the responsibilities of civilized life.

It is plain, we submit, that the considerations urged by the Court for its decision in that case have no application in a case like this, where the question is as to the status and the rights of an Indian when he has broken off all tribal relations and elected to live separately from the tribe, and adopted (as he was authorized to do by Congress) the separate individual life and habits of a white man.

Another thing, it is plain from the language quoted, "that it was within the contemplation of the Court, that the guardianship might be either PARTIALLY or WHOLLY released—might be retained for the salutary purpose of protecting against the sale of intoxicating liquors, or of protecting the trust property in which the Government still had a property interest."—While in all other respects the Indian might be, (as he clearly was) made subject to

the laws of the state where he resided.

This conclusion is strengthened by the language of another paragraph of the decision, in which it is said:

"Of course, when the Indians are prepared to exercise the privileges and bear the burden of one *sur juris* the tribal relation may be dissolved and the National Guardianship brought to an end, but it rests with Congress to determine when and how this shall be done and *whether the emancipation shall at first be complete or only partial* Citizenship is not incompatible with tribal existence or continued guardianship and so may be conferred without completely emancipating the Indians, or placing them beyond the reach of congressional regulations adopted for the protection."

Now read in connection with this case the language of this Court in the case of United States vs. Waller 243 U. S. 452—which is, we believe, the very latest utterance of this Court upon the guardianship question.

In the latter case, the Indian in question was an ignorant mixed blood Indian. His title to his land had been made absolute by an act of Congress, but he retained his tribal relations. **AND REMAINED UPON THE RESERVATION.** The Indian was too ignorant to write his own name, and a white man, by apparently the grossest fraud, had taken advantage of his ignorance and secured a conveyance of the land.

The Government undertook to commence a suit on his behalf in the Federal Court to set aside the fraudulent conveyance.

The question was whether by reason of his continued residence on the reservation under the charge of the agent, the Government could maintain a suit, as his guardian, to protect him IN THE MATTER, OF THIS ALLOTMENT the legal title to the same having been released to him by the Government.

This Court held, that the Government COULD NOT SUSTAIN AN ACTION AS GUARDIAN IN RELATION TO THIS LAND, ALTHOUGH IT MIGHT STILL BE HIS GUARDIAN FOR SOME OTHER PURPOSE, saying:

"The tribal Indians are wards of the Government and as such under its guardianship. It rests with Congress to determine the time and extent of emancipation, conferring citizenship, is not inconsistent with the continuation of such guardianship, for it has been held that even after the Indians have been made citizens, the relation of guardian and ward *for some purposes* may continue.

"On the other hand, Congress may relieve the Indians from such guardianship and control *in whole or in part* and may if it sees fit, clothe them with full rights and responsibilities concerning their property, or to give to them a *partial emancipation*, if it thinks that course better for their protection."

And again—

“In the case now before us, in whatever other respect, the Government of the United States, *may continue to hold these Indians as wards*, needing and receiving protection from its authority over their persons and property.—As to the lands in question, the United States, in the passage of the Clapp amendment, evidenced its purpose to grant full power and control to the class named. As to them, the Government has no further interest in or control over the lands.”

In the light of these decisions of this Court, the obvious question is, as to HOW FAR CONGRESS INTENDED TO EMANCIPATE INDIANS IN CASES OF THIS KIND.—viz: Indians who had PERMANENTLY SEPARATED FROM THEIR TRIBES AND ADOPTED CIVILIZED LIFE; when it provided in the Act of 1887 (reenacted in this regard in 1906,) that:

“Every Indian born within the Territorial limits of the United States, who has voluntarily taken up within said limits, his residence, separate and apart from any tribe of Indians, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled *to all the rights and privileges and immunities of such citizens.*”

Certainly it must be conceded, that this law, conferred SOME DEGREE OF EMANCIPA-

TION UPON THE INDIANS, who had thus accepted civilization—made some change in his dependent status. Otherwise this solemn and impressive annunciation of Indian rights by Congress, were but idle words.

What then did Congress intend in this instance by conferring upon such Indians "ALL OF THE RIGHTS AND PRIVILEGES of other citizens.

Unquestionably it seems that one of these privileges was to go into and invoke the assistance of the State Courts. That this right to invoke the protection of the State Laws, and go into the State Courts in his own behalf, was conferred by this act of Congress will hardly be denied.

Assuming then that such right, to go into the Courts on his own behalf, the same as any other citizen, was conferred, is it credible that Congress intended that there should be a DOUBLE ACTION, on behalf of every such civilized Indian. That he might proceed in the State Courts on his own behalf, and that the Government might, AT THE SAME TIME, proceed in his behalf in the Federal Court, to enforce the self same right; as was actually attempted in this case.

The conclusion that Congress had such an

intent, is we submit, improbable and unreasonable.

Much is made, in the brief of the Government, in the Court below of the principle, that Congress is presumed to not have intended any radical departure from a settled and long continued policy.

But that principle of construction is not applicable here, for here there WAS NO DEPARTURE FROM SETTLED POLICY. On the contrary it has long (perhaps always) been the policy of the Government to encourage the Indians, to break off their tribal relation, and adopt the habits of civilized life—to make separate homes, and assume the duties and responsibilities of ordinary citizens.

U. S. vs. Celestine 215 U. S. 278.

It was urged in the Court below that if Congress had intended to dissolve the relation of guardianship, it would have done so by EXPRESS words—"The relation of guardian and ward is hereby abolished, etc."

But in view of the history of legislation upon this subject, this is hardly a reasonable argument. The relation of guardian and ward was not even CREATED OR DECLARED in the first place by express words. On the contrary it was IMPLIED from the general dealings with the Indians by Congress.

And, so it is thought, there has never been a case in which the relation of guardian and ward has been dissolved by express words, directed to that particular relation. And yet there are thousands of Indians in the United States, whose independent citizenship would surely not be doubted for a moment.

There were no such "express words" in the case of the Indian whose lands were involved in the U. S. vs. Waller, already cited, and yet the Supreme Court held that the relation, was dissolved.

No one questions and it is conceded in all the decisions, that the relation of guardian and ward, will be dissolved, WHEN THE FINAL FEE PATENT IS ISSUED. And yet, this conclusion, IS ONLY REACHED BY IMPLICATION.

When Congress provided that any Indian who had "voluntarily taken up his residence, separate and apart from any tribe of Indians" and "has adopted the habits of civilized life," is "hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges and immunities of such citizens." It had expressed its intention with more than ordinary clearness, and unless there is something in the context or in concurrent legislation to limit

that intention as in the matter of the preliminary allotments in the Nice case—that intention ought to prevail.

As to this part of the section, applying to Indians who have VOLUNTARILY BROKEN OFF THEIR TRIBAL RELATION, there is absolutely nothing, either in the act itself, or in other concurrent legislation, which could modify the natural implication in a case like this, where there was no question of selling liquor and the trust lands in which the government had an interest, was in no way involved.

It is urged that the modification of the Act of 1887 by the Act of 1906, in relation to trust allotments, has an important bearing.

But it must be remembered, that the Act of 1906 *did not modify or change that portion of the law applying to Indians who had voluntarily severed their tribal relations, in the slightest*, but actually reenacted the same word for word.

Another significant thing, is that the Act of 1906 seems clearly intended to give the separation of the Indian from the tribe, etc, EXACTLY THE SAME EFFECT AS THE FINAL PATENT IN FEE.

Every Indian * * * to whom allotments

shall have been made, and WHO HAS RECEIVED A PATENT IN FEE SIMPLE * * * * AND every Indian born, etc., who has voluntarily taken up his residence separate and apart from every tribe of Indians and has adopted the habits of civilized life, is hereby declared to be a citizen, etc.

Is it not plain then from the last enactment that Congress intended to place the Indian, who had adopted civilized life, in the same category with the one WHO HAD OBTAINED HIS FINAL PATENT IN FEE?

WILLIAMS NEVER A YAKIMA INDIAN

So far the discussion of the case on the part of Defendant in Error has been based upon the theory that if Williams ever had been a Yakima Indian, he was no longer a ward of the Government for the purposes of an action like this, by reason of his separation from his tribe and the adoption of civilized life and the declaration of Congress in such cases.

The Court below based its decision upon this ground and did not decide the question, as to whether he was a Yakima, (233 Fed. 587.)

The question, is not, perhaps, now, necessary to a decision of this case. But we submit to the Court that Sam Williams never has been, really a Yakima Indian, in fact.

Notwithstanding this allotment, we contend that the facts alleged in the complaint, show that he never belonged properly to that tribe.

It will be noticed that there is no allegation or proof that he ever lived or affiliated with the Yakima tribe.

On the contrary the undisputed facts are that for 21 years at least, he has had his residence in another state from that tribe.

As a matter of fact his father was drowned on the lower Columbia (Cowlitz Country) when he was an infant, and he remained with his mother in that tribe until he was old enough to do for himself, when he commenced fishing on the Columbia River, and worked, along up until finally he reached The Dalles where he permanently remained.

(Record Vol. 2, P. 440.)

It is a historical fact, which has been frequently recognized by the Courts, that in Indian life and according to Indian customs, an Indian child living with the mother AND REARED IN HER TRIBE, belongs to her tribe, even although its father was of another tribe or even

a white man.

U. S. vs. Hadley, 99 Fed. 438.

Higgins vs. U. S., 103 Fed. 352.

Indeed this naturally, if not necessarily, follows among a people of nomadic habits, where the marital relations were so indefinite, and oftentimes, temporary.

With such restless habits, it was impossible, in case of separation, for the father to care for an infant child, and naturally, such a child remained with the mother, and was raised by her amongst her own people.

Here, then, was a case, where the child was born in another tribe than the Yakimas—raised in that other tribe, and affiliated with them as long as he affiliated with any tribe, at all. Until he went out for himself and made an independent home among white men.

He was not born a Yakima. He was not raised a Yakima. He never lived with the Yakima tribe, or adopted its customs or affiliated with its people.

Surely then he never became and never was a Yakima Indian IN FACT at all.

MERE ALLOTMENT DID NOT MAKE
WILLIAMS A YAKIMA.

But it is contended that the action of the Indian department in making Williams an allottee on the reservation is CONCLUSIVE, upon the Courts, even in a matter like this, where the allotment is in no way involved. There was a time, when the acts of the department, were final as to the *mere right of an Indian to an allotment*. And this is the full extent and holding of the authorities cited by Plaintiff.

There NEVER WAS A TIME, we submit, when the action of the department was controlling IN A COLLATERAL MATTER, between different parties.

Any doctrine that the action of the department, in an allotment matter, between the Indian and the Government alone, in relation to the right to the land alone, could fix the status of the Indian as to other collateral matters, and his rights between him and other parties, who never had a chance to be heard in the allotment, at all, and who were not parties to that matter in any way; would be contrary to the elementary principle that "every man must have his day in Court," and would be monstrous in its effect.

U. S. vs. Hadley, 99 Fed. 437.

Dickson vs. Luck Land Co., 132
Minn. 396.

Dickson vs. Luck Land Co. 242
U. S. 371.

In the Hadley case cited above, the defendant was indicted in the Federal Court as AN INDIAN, for larceny on an Indian reservation.

The evidence developed that although he was AN ALLOTEE, LIVING UPON THE RESERVATION, yet, he was half white and had been BORN AND RAISED OFF THE RESERVATION and among white men. It was claimed, as in this case, that the action of the department, in treating him as an Indian, and allotting him land was decisive, as to his status.

The Court held that the status of a half breed, depended upon WHERE HE WAS BORN AND RAISED, and that as this particular half breed, was born and raised *off the reservation*, he must be held, as a matter of fact, to be a white man; and not properly belonging to the Indian tribe; although the defendant had accepted the allotment, and was at the time *actually living on the reservation*.

Judge Hanford, who delivered the opinion, saying:

"Whether the allotment was lawful or otherwise, is a question which cannot be determined in this proceeding, and I consider that it is immaterial because the action of

the officers of the Indian department in making the allotment to him, could not deprive him of his birth right as the son of a white man."

In the case of Dickson vs. Luck Land Co. 132 Minn. 396, the parties to the action were claiming the land under separate and adverse deeds from the Indian in question, and it was claimed that the first of these deeds was made while the Indian was a minor, and was therefore void.

The land in question HAD BEEN ALLOTTED AND PATENTED TO THE INDIAN BEFORE THE EXECUTION OF EITHER DEED.

Before the land could be allotted and patented to an Indian, *the department had to find as a matter of fact that the Indian was then over age.*

It was contended there, as here, that the finding of the department was binding and conclusive, not only as to the direct matter of the Indians right to the allotment, but *also as to the matter of his age* at the time of the allotment in the collateral trial, between the two claimants, under the Indian deeds.

It was held, that the finding of the department was in no way controlling in the collateral proceeding; the Court saying:

"But there is no case holding that the finding of the Secretary of the Interior or

the Land Department, that the Indian is an adult, settles this question, *for all purposes and for all times*. It settles is conclusively insofar as the right of the Indian to *take and hold title* is concerned, but the department has not attempted to adjudicate the capacity of the Indian to transfer his title."

This case was affirmed by the Supreme Court of the United States in the very recent case of Dickson Luck Land Co. 242 U. S. 371, in which it is said:

"Thus the question for decision, is whether the patent was to be taken as determining the allottee's age, *for any purpose other than that of fixing his right to receive the full title*, free from any restrictions imposed by Congress. There is no mention of his age in the patent, and yet it must be taken as a finding that he was then an adult.

"This is because every patent for Public or Indian lands, carries with it an implied affirmation, or finding of every fact made a prerequisite of its issue, and because the provision in the Act of 1907, made the majority of the allottee a prerequisite to the issue of this patent. But such implications, although appropriately and generally indulged in, in support of titles held under the Government patents *are not regarded as otherwise having any^a conclusive or controlling force.*"

And again

"Although saying nothing on this

point, it (the Act) evidently intends that the administrative officers, shall be satisfied in each instance before issuing the patent, that the allottee belongs to the particular class; and so the patent when issued carries with it the implication that those officers found the allotment to be of that class. But the provision gives no warrant for thinking that this finding should have any greater effect or wider application, than is accorded to the findings implied from the issue of other patents."

In passing upon homestead applications, etc., it is always necessary that, the land department shall pass upon the citizenship of the applicant and find that he is a citizen of the United States. Would it not be foolish to suggest that, such finding would have any effect, in litigation between such claimant and other parties, where his citizenship became an issue.

We submit therefore to the Court that, the finding of the Indian Department, while once conclusive, WHERE THE QUESTION WAS AS TO THE ALLOTMENT ITSELF, and the right thereto, never was controlling, in a collateral proceeding, between other parties and where the right to the allotment was not being litigated.

It is not very important here, since, as we

have already seen, such findings of the Indian Department never were controlling in a collateral matter like this, but it is an interesting fact in this connection, that such findings are NO LONGER CONTROLLING UPON THE COURTS, EVEN AS TO THE DIRECT MATTER OF THE INDIAN RIGHT TO AN ALLOTMENT AND WERE NOT AT THE TIME OF THIS TRIAL.

The act of Congress approved December 21, 1911,—37 Statutes at Large P. 46—carried into the New Judicial Code of 1913, Section 24, Subdivision 24.—Gives the Courts jurisdiction—

“of all actions, suits or proceedings involving the right of any person in whole or in part of Indian blood, to any allotment of land, etc.”

and provides further that—

“the judgment or decree of any such Court in favor of any claimant to an allotment of land, shall have the same effect when properly certified to the Secretary of the Interior, as if such allotment had been allowed and approved by him.”

Also see *Hi-Yu vs. Smith* 194 U. S. 401-48—
Law Ed. 1041.

In conclusion therefore we submit to the Court:

First: That the treaty with the Yakimas,

reserved no right to that tribe, to fish from the bluffs on the South side of the river, in the country of the Wascos.

Second: That the treaty gave no right to fish for commercial purposes with great permanent and exclusive appliances, like fish wheels.

Third: That Sam Williams was not properly a Yakima Indian, or a ward of the Government.

Fourth: That the Yakima tribe could not, by proper amendment, be substituted, for Sam Williams, the original party in interest.

Fifth: That the Court could not, after adjudging that the only fishing point, in issue in the case was not a Yakima fishing place, proceed of its own motion to substitute other places and points, in no way mentioned or described in the pleadings.

Respectfully submitted,

A. S. BENNETT and

H. S. WILSON,

Attorneys for Appellants.

JAN 27 1919

JAMES D. MAHER,
CLERK**SUPREME COURT OF THE UNITED STATES.**

No. 187.

SEUFERT BROTHERS COMPANY, APPELLANT,*vs.*

THE UNITED STATES OF AMERICA AS TRUSTEE AND GUARDIAN OF THE CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIANS AND NATIONS, AND AS TRUSTEES AND GUARDIAN OF AND EX REL. SAM WILLIAMS, AND SAM WILLIAMS.

No. 188.

THE UNITED STATES OF AMERICA AS TRUSTEE AND GUARDIAN OF THE CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIANS AND NATIONS, AND AS TRUSTEE AND GUARDIAN OF AND EX REL. SAM WILLIAMS, AND SAM WILLIAMS, APPELLANTS.

*vs.***SEUFERT BROTHERS COMPANY.**

**REPLY BRIEF FOR
SEUFERT BROTHERS COMPANY**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF OREGON.**

**A. S. BENNETT and
H. S. WILSON.**

Attorneys for Appellants,
SEUFERT BROTHERS COMPANY.

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Treaties not cited heretofore or if cited not quoted as fully as in this brief. Sale of Wenatschapam fishery, Kappler's Indian Treaties, Vol. 1, page 529, Senate Document —, Vol. 34, page 529. Cession of fishery right by Middle Oregon Tribe, 14 Stat. Large, 75 N.

In our original Brief on pages 18 and 19 is to be found a quotation which is attributed to the 119th U. S. page 1. This is an error. The quotation is taken from a case with the same title but it is to be found in the 179th U. S. 494. The quotation is correct, but it is attributed to the wrong case.



SUPREME COURT OF THE UNITED STATES.

No. 187.

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vs.

SEUFERT BROTHERS COMPANY.

REPLY BRIEF FOR SEUFERT BROTHERS COMPANY

I.

In its attempt to construe the Treaty in question, so as to give the Yakima Nation the right to take fish on the Oregon side of the Columbia River, and IMPOSE THE SAME SERVITUDE UPON ITS SOIL

AS IS IMPOSED UPON THE SOIL OF THE STATE OF WASHINGTON, the plaintiff argues that the matter of the boundary of the country included within a treaty with the Indians was not of much importance either to the Government or to the Indians.

It is manifest, we think, that it is of the greatest importance that the boundaries be exact and that they be agreed upon and understood.

1. As already suggested by us it is necessary in order to extinguish Indians rights to land to have the relinquishment of such rights executed by the Indians claiming them—otherwise no rights are extinguished.

The fact that all the Indian country is covered by relinquishment from various tribes amounts to nothing, unless the relinquishments are executed by the owners of such rights.

2. It is also necessary in order to prevent conflicting treaty claims by the Indians.

Further it is necessary in order to indicate with certainty to settlers what lands had a servitude imposed upon them by treaty, inasmuch as such settlers are guaranteed by the treaty in question the right to occupy ANY LAND not actually occupied and cultivated by the treaty-making Indians at the time of the making of the treaty and not included in Reservation and generally that the application, scope and meaning of this Treaty which is a part of the supreme law of the land may be understood.

The treaty in question contains indisputable proof that both the Government and the Indians appreciated the necessity of fixing and understanding the limits and location of the country affected by the treaty.

The opening statement of the Yakima Treaty is as follows:

"Articles of agreement and convention made and concluded at the Treaty Ground, Camp Stevens, Walla Walla Valley, this 9th day of June, in the year 1855, by and between Isaac L. Stevens, Governor and Superintendent of Indian Affairs for the Territory of Washington on the part of the United States and the undersigned head chiefs, headmen and delegates of the Yakima, etc., etc. confederated tribes and bands of Indians occupying the lands hereinafter BOUNDED AND DESCRIBED AND LYING IN WASHINGTON TERRITORY, who for the purposes of this treaty are to be considered one nation under the name of Yakima with Kamiakum as its head chief on behalf of and acting for said tribes and bands and being duly authorized thereto by them."

From the foregoing we learn and the Indians must have understood that the Government was acting through the Governor of the Territory of Washington and Superintendent of Indian Affairs for the Territory.

That the Indians dealt with occupied lands hereinafter bounded and described, and LYING IN WASHINGTON TERRITORY. Article I of said treaty is as follows:

Article I. The aforesaid confederated tribes and bands of Indians hereby cede, relinquish and convey to the United States ALL THEIR RIGHT, TITLE AND INTEREST IN AND TO THE LANDS AND COUNTRY OCCUPIED AND CLAIMED BY THEM, AND BOUNDED AND DESCRIBED AS FOLLOWS, TO-WIT:"

It is to be noted that by this Article the Yakima confederated tribes convey ALL THEIR RIGHT, TITLE AND INTEREST IN AND TO THE COUNTRY OCCUPIED AND CLAIMED BY THEM.

It follows that the Indians here agreed and understood they did not claim any rights in any lands outside of the territory "hereinafter bounded" or outside of Washington Territory and a right TO IMPOSE A SERVITUDE UPON OREGON SOIL would be such a right however expressed.

The boundary commences at Mt. Ranier and omitting most of the description the last part of the same is as follows:

"Thence down the Snake River to its junction with the Columbia River; thence up the Columbia River to the 'White Banks' below the Priests Rapids; thence westerly to a lake called 'La Lac', thence southerly to a point on the Yakima River called Toh-mak-luke; thence in a southwesterly direction to the Columbia River at the western extremity of the 'Big Island' between the mouths of the Umatilla River and Butler Creek; all of which latter boundaries separate the above confederated tribes and bands from the Walla Walla, Cayuse and Umatilla tribes and bands of Indians; thence down the Columbia River to midway between the White Salmon and Wind River; thence along the divide between said rivers to the main ridge of the Cascade mountains and thence along said ridge to the place of beginning."

It is to be noted in this description that where the boundary lines do not consist of some natural object that it is frequently said that such boundary lines separate the federated tribes and bands of Yakima Indians from certain other named tribes of Indians thus evincing the most scrupulous care to indicate to the Indians the exact boundary of the country ceded.

This treaty was signed by fourteen chiefs and witnessed by nine different persons, among whom was General Joel Palmer, Indian Superintendent for Ore-

gon Territory and who on June 25, 1855, in behalf of the Government negotiated a treaty with the Middle Oregon Indians.

This treaty with the Yakimas was ratified by the Senate March 8, 1859 by resolution which reads as follows :

"IN EXECUTIVE SESSION

Senate of the United States, March 8, 1859.

Resolved, (two-thirds of the Senators present concurring) That the Senate advise and consent to the ratification of the treaty between the United States and the head chief, chiefs, headmen and delegates of the Yakima, Palouse, and other confederated tribes and bands of Indians OCCUPYING LANDS LYING IN WASHINGTON TERRITORY, under the name of 'Yakima' with Kamaiakum as its head chief, signed 9th June 1855.

ASBURY DICKENS, Secretary.

Attest :

(12 U. S. Stat. at Large 955.)

All persons and all bodies, including the Senate of the United States understood that the Yakima Indians by this Treaty claimed no right outside of the ceded territory and least of all did they think that such Indians had a right under this treaty to impose a servitude upon Oregon soil.

The Senate understood that the lands affected were situated in Washington territory.

The treaty with the Middle Oregon Indians describes them as confederated bands and tribes of Indians residing in Middle Oregon, and by Article I of that treaty executed June 25, 1855 said confederated tribes and bands of Indians ceded to the United States "ALL THEIR RIGHT, TITLE AND INTEREST IN AND TO EVERY PART OF THE COUNTRY CLAIMED

BY THEM", and in bounding the ceded territory the northern line runs "down the channel of the Columbia River" thus making the north line of the country ceded by the Middle Oregon Indians the same as the south line of the territory ceded by the Yakimas.

There is the same exclusive right of taking fish as in the Yakima treaty, the treaty reading:

"Provided that the exclusive right of taking fish in the streams running through and bordering said Reservation is hereby secured to said Indians and at all other usual and accustomed stations in common with the citizens of the United States, and of erecting suitable houses for curing the same."

There was a treaty negotiated by the Nez Perce Indians on the 11th of June 1855—Stat. at Large, Vol. 12, page 957 and the subject matter of the Treaty was identified by referring to the Nez Perces as a tribe occupying lands lying partly in Washington Territory and partly in Oregon Territory—the Senate's ratification also so identified the subject matter of the Treaty.

In this treaty the United States was represented and acted through Isaac Stevens, Governor of the Territory of Washington and Superintendent of Indian Affairs for that Territory, and the United States was also represented and acted through General Palmer, Superintendent of Indian Affairs for Oregon Territory.

As shown by this Treaty Governor Stevens treated only with the Indians residing in Washington Territory and General Palmer only with the Indians residing in Oregon Territory.

If Indian rights located in Oregon or rights of Oregon Indians had been dealt with or touched upon in the Yakima Treaty General Palmer would have treated

with the Oregon Indians and they would have been a party to the Treaty.

As further bearing upon our contention that the Indians understood their boundaries and that in treating with any given tribes in one treaty the contract was confined and limited to the lands ceded, we quote from the treaty between the United States and the Middle Oregon Indians whereby they relinquished whatever fishing rights were secured to them in common with citizens of the United States (14 Stat. at Large, page 75).

“Article I. It having become evident from experience that the provisions of Article I of the Treaty of the 25th of June 1855 which permits said confederated tribes TO FISH, hunt, gather berries and nuts, pasture stock and erect houses on lands outside the Reservation AND WHICH HAVE BEEN CEDED TO THE UNITED STATES is often abused by the Indians, etc. Therefore it is hereby stipulated and agreed that all the rights enumerated in the third proviso of the first section of the beforementioned treaty of the 25th of June 1855, that is to say the right to take fish and erect houses, hunt game, gather nuts and berries and pasture animals without the Reservation set apart by the treaty aforesaid are hereby relinquished by the confederated Indian tribes and bands of Middle Oregon parties to this treaty.”

Here we find a flat declaration that the fishing rights of the Middle Oregon Indians secured to them to be exercised in common with citizens is confined to land ceded.

This is a demonstration that the meaning of the Middle Oregon Treaty is as we contend and it seems to us conclusive as to the meaning of like fishing clauses in the Yakima Treaty.

Is it not clear from a reading of the Treaty provisions that all fishery rights reserved to the confederated tribes in the Yakima Treaty were to be exercised within the territory claimed and occupied by the contracting Indians and by them ceded to the United States?

The above quotation from the Treaty of '65 fully supports our Original Brief, although the headline was not a quotation from the Treaty.

II.

The Government's contention results in imposing a servitude upon Oregon soil, although the Treaty mentioned land lying in Washington Territory only. THE RIGHT TO FISH ON THE OREGON SIDE OF THE COLUMBIA UNDER THE TREATY WHETHER EXPRESSED IN THE DECREE OR NOT CARRIES WITH IT THE RIGHT OF INGRESS AND EGRESS AND THE RIGHT TO BUILD TEMPORARY STRUCTURES FOR THE PURPOSE OF CURING FISH AND IT IS SO EXPRESSED IN THE DECREE.

It is beyond challenge that the treaty itself wherever it gives the Indians the right to fish also gives them ingress and egress and the right to build temporary structures.

It is said in the case of *United States vs. Winans*, 198 U. S., page 381:

"There was an exclusive right of fishing reserved within certain boundaries. There was a right outside of those boundaries reserved in common with the citizens of the Territory. * * * They were given the right of taking fish in all usual accustomed places and the right of erecting temporary buildings for curing them."

Two lots belong to Seufert Brothers Company are described in the decree as lots upon which a servitude is imposed and further a construction of this treaty in conformity with the Government contention would leave it open to the Yakima Indians to contend that any place along the Columbia River on the Oregon side or elsewhere was the usual and accustomed place of taking fish and if such contention were upheld a servitude would be imposed upon the Oregon soil adjacent or upon the soil of any State.

Quoting further from the *Winans* case, *supra*, page 381, it is said:

“Reservations were in large areas of territory and the negotiations were with the tribe. They reserved rights, however, to every individual Indian as those named therein. They imposed a servitude upon every piece of land as though described therein.”

Considering the fact as shown above that the Indians ceded to the United States all their right, title and interest in and to the country claimed and occupied by them, it would be a contradiction to put into this treaty, by inference, a description of land lying outside of the territory ceded and in another State as land upon which a servitude was imposed by the treaty.

The rights secured to the Indians were rights to be exercised upon territory formerly claimed and occupied by them which they had ceded to the United States. Any sentence which when taken alone might indicate otherwise is to be read in connection with the matter about which the Indians were talking. One good illustration is to be found in that portion of the Yakima Treaty wherein citizens are guaranteed the right to settle upon any lands ~~not~~ outside the reservation at the time of the execution of the treaty occupied and culti-

vated by the confederated tribes and bands of Indians making the treaty.

Did the Government throw open for settlement every piece of land in the United States not at the moment in the occupancy and being cultivated by the Yakima Indians? Certainly not. This clause in the treaty refers to any territory ceded by the said treaty and outside Reservation not occupied and cultivated by the Indians and this meaning is just as plain the way it is expressed as it could be ^{by} all Indians, both white men and Indians, knew what lands they were talking about. The meaning was consequently clear.

In further argument of our contention that the Yakima Indians are confined in their fishing under their treaty to the Washington side of the Columbia River and upon incidental questions, we suggest:

III.

DEFENDANT'S CONSTRUCTION OF THE TREATY FAVORS THE YAKIMA INDIANS AND IS NOT AGAINST THEIR INTEREST AS IT EXCLUDES ALL OTHER INDIANS FROM FISHING ON THE NORTH BANK OF THE COLUMBIA RIVER WHICH IS BY FAR THE BETTER FISHING GROUND THAN THOSE OF THE SOUTH SIDE.

Such construction while it excludes the Yakima from the poorer fishing grounds on the south bank also excludes the Middle Oregon tribes and all other tribes from the GOOD FISHING PLACES ON THE NORTH BANK.

It must have been manifest to the Indian mind that, when to the confederated Yakima Indian Tribes there was secured the exclusive right to take fish from streams running through or bordering the Reser-

vation, that no other person could participate in that right and equally plain that where a right was secured to the confederated Yakima Tribe take fish in common with citizens that no other Indians could participate in that right.

Again as the fishing right so secured excluded other Indians the right so secured was one that was to be exercised in common with citizens only, not in common with citizens and other Indians.

The contention on the part of the Government results in violating the terms of the treaty and compelling the confederated tribes to share their fishing rights with the Wascos while the contention on the part of Seufert Brothers Company results in the harmonious construction of the treaty leaving the several contracting bands of Indians, in the several treaties, rights to be exercised in the country formerly occupied and claimed by them and which they have ceded and denying them the authority to go upon land ceded by other Indian tribes and there exercise alleged treaty rights of their own in violation of the treaty rights of the Indians who formerly occupied such territory. It is to be borne in mind that the treaty with the Yakimas and the treaty with the Middle Oregon tribes was of like nature and that in construing these treaties we are not only construing the Indians' rights as between citizens and Indians but we are construing the rights of different treaty-making Indians between themselves and that in making construction of the Yakima treaty when taken in connection with the treaty of the Middle Oregon Indians as we must, we are confronted with the question of construing these treaties between the Indians and in determining what right the Indians, as between themselves, have thereunder and if we were left to construe each of these treaties as each of these

unlettered people might now say they understood these several treaties we would find ourselves in the worst sort of confusion.

In construing the Yakima Treaty in favor of the Yakima Indians plaintiff seeks to give him fishing rights in the country ~~ceded and~~ occupied by and afterward ceded ~~the~~ the Middle Oregon tribes and this to the detriment of the Middle Oregon tribes as the value of this fishery right of theirs would be thereby diminished.

In construing the treaty right of the Middle Oregon tribes a like construction would give such Indians fishing rights on the Washington side of the river to the detriment of the rights secured to the Yakimas in their treaty.

Again if one guided by the interest of the Indians making the treaty should also in his construction of the same take into consideration the interests and rights of Indians not parties to the particular treaty being construed such a course would lead to a denial of the Yakima Indians to exercise any right out of the territory ceded and bounded by the treaty. If the Government's contention in this regard be upheld there would be the utmost confusion caused by conflicting claims both between Indians and Indians and citizens.

The chief interest of the defendants herein is in the result that would flow from the Government's contention and not in the particular fishery described in the decree and we ought to say that other citizens have made permanent improvements the value of which would be jeopardized by the application of the Government's construction of this treaty.

The mere fact that the Middle Oregon tribes relinquished their fishing rights in the territory ceded by them and outside of their Reservation, of course is of no importance in the construction of the Yakima Treaty.

We think it is clear that these treaties must be construed the same way whether the question arises between a citizen and an Indian or between Indians solely and that the defendant's construction must prevail as the one demanded by reason and justice and as the one in harmony with the wording of the Treaty.

If the Yakima had claimed country on the Oregon side and the Wascos and the Middle Oregon tribes on the north side a treaty could have been entered into combining the different tribes and in which all would have been parties and there could have been indicated the fact if so desired, that the contracting Indians had common rights between themselves and as between themselves and citizens, and this would certainly have been done if the Government had had the remotest idea, either when the treaty was ratified or when it was executed by the Indians, that such a claim would be made.

IV.

THE TREATY RIGHT OF TAKING FISH WAS A VALUABLE ONE AS CONTENDED IN BRIEF OF PLAINTIFF.

IT IS TO BE REMEMBERED, HOWEVER, THAT THIS RIGHT WAS SECURED TO THE INDIANS TO SATISFY THEIR PRIMITIVE WANTS AND DID NOT CONTEMPLATE COMMERCIAL FISHING AS CARRIED ON TODAY. IN THE SAME TREATY THERE WAS SET APART AS THE EXCLUSIVE FISHERY OF THE CONFEDERATED TRIBES OF THE YAKIMA INDIANS, THE SO-CALLED WENATSHAPAM FISHERY. This fishery was ceded back to the Government on January 8, 1894 for \$20,000 (see Kapplers Indians, Vol. 1, page 529, Senate Documents, Vol. 34, page 529.)

The fishing privileges of the Yakima Indians on the north bank of the Columbia and opposite the places in controversy are very productive so that they sell thousands of dollars worth of fish each year which are put up in canneries. They have no need of the Wenatshapam fishery as the fishery which is theirs beyond challenge on the north bank furnishes more fish than they can use and many tons for sale.

The Indians are paid many thousands of dollars each year by the Seufert Brothers Company, the fish being caught by the Indians on the north bank of the river. This evidence is again referred to on another point.

This argument indicates merely that the Yakimas have no need to fish on the Oregon shore.

V.

THE PRESENT SUIT WAS COMMENCED SOLELY TO ENABLE SAM WILLIAMS TO USE THE POINT MARKED ON THE ROCKS AND LOCATED AS 12 CHAINS WEST AND 28.53 CHAINS NORTH OF THE $\frac{1}{4}$ SECTION CORNER BETWEEN SECTIONS 1 AND 36, TOWNSHIPS 1 AND 2 NORTH, RESPECTIVELY BOTH OF RANGE 13 E. W. M. IN WASCO COUNTY, OREGON, he seeking there to use a monopolistic device in the form of a scow fishing wheel and only upon failure to accomplish that purpose was the amendment made bringing in the Yakima Nation.

Having failed as far as Williams was concerned the United States commenced another case for him and was defeated both in the Federal District Court and in the Circuit Court of Appeals.

(See *United States as Guardian and Trustee of Sam Williams vs. Seufert Brothers Company*, 252 Fed. page 51.)

The decision in the lower Court and in the Circuit Court of Appeals were both against Williams. He then commenced a suit in the Circuit Court of the State of Oregon for *Multnomah County vs. Seufert Brothers Company* and members of the Fish and Game Commission for the State of Oregon for the purpose, among other things, of compelling the issuance of a license allowing him to fish at the identical point described as 12 chains West, etc.

Williams in his complaint set up the fact that he was a citizen of the State of Oregon and did not refer at all to the fact that he was an Indian or mention any right claimed as an Indian but sued simply as a citizen of the State of Oregon.

Williams having prevailed in the Lower Court the case was appealed and is now pending in the Supreme Court of the State of Oregon. The case is not reported of course but we have for inspection the printed Abstract of Appeal.

We cite this case to show that the United States is mistaken in its efforts as to Sam Williams and equally likely to be mistaken in its contention concerning other alleged fishing and to show that Sam Williams as a citizen solely has accomplished as against all Yakima Indians the very thing that the Government alleges Seufert Brothers Company was seeking to accomplish against Sam Williams when he was claiming as a Yakima Indian with Yakima Treaty rights.

VI.

Defendant squarely raised the question in its Assignment of Error No. 7, Brief, page 12, to the effect that

the Court erred in holding portions of the South Bank of the Columbia River in the county of Wasco, State of Oregon, described in the Decree, was or is one of the usual and accustomed places of fishery belonging to and possessed by the confederated tribes and bands of Indians, known as the Yakima Nation, and the record containing the evidence is all before the Court. The Record, Vol. 1, page 68, Vol. 2, page 671, shows that the Record was made up in strict conformity with the rules and the Government cannot now raise the question suggested.

The maps and plats referred to are on file with the Clerk of this Court properly certified and are so bulky and numerous that they cannot be presented in oral argument. Neither is it necessary for a proper understanding of the evidence. We shall not go into this testimony in detail, as it is impossible and as we think unnecessary.

To generalize somewhat the north bank as heretofore suggested furnishes much better fishing places and contains the usual and accustomed places for the confederated tribes and bands of Indians known as the Yakima Indians to take fish.

It is notorious that these upper fishing places on the Washington side were the best places on the river. Every witness on the stand knew or had heard of these places as Indian fishing places and in order to reach the South Bank the Indians had to pass by these good fishing places, cross a dangerous river and go up and down the bluffs from Skein and Wish-ham.

Seufert testifies:

Q. Now then, how are these places at Five Mile Rapids and Celilo as to being good places for Indian fishing—dip net fishing?

A. They are much better than the Oregon side, they are good places.

(Record Vol. 2, page 502.)

Mr. Seufert testified that in the thirteen days from the first until the 13th of May, 1915, he paid the Indians for their catch at these places TWO THOUSAND AND FIVE DOLLARS, and there was still about one third of that time to pay and this was for dip net fishing alone.

(Record Vol. 2, page 502.)

Frank Seufert, Jr., testified that they sometimes buy ten tons a day of fish from these Indians.

(Record Vol. 2, page 556.)

He also testifies that there are forty or forty-five different places at Celilo on the Washington side.

(Record Vol. 2, page 602.)

Whipple testifies as to the good fishing places at Wish-ham on the Washington side at all stages of water early and late.

Fred Smith testifies to the same effect.

(Record, Vol. 2, page 463.)

Wickman testifies that there are seventy to one hundred dipping places in front of the village and on the Washington side.

(Record, Vol. 2, page 607.)

With this in view the fact that the Yakima Nation had ceded the Wenatshapam fishery bank to the United States for a consideration is weighty evidence in favor of the proposition that the Indian wants were satisfied by the fishing rights secured to them in the Treaty on the Washington side and within the ceded territory.

Further we have the direct and positive testimony of fourteen intelligent white witnesses and two Indians, all of whom were in a position of such intimacy that they must have known the habits and customs of the Indians in that regard, who testified directly that the custom was for the tribes on each side of the river to fish on their own side, and that as a matter of fact not only the tribes but EACH PARTICULAR FAMILY of Indians had their exclusive fishing place which they own. Ten of these white witnesses have no interest in this case whatever. This testimony is corroborated in numerous ways, among others by the allegations in the bill of complaint as to the individual and tribal ownership of fishing places.

The testimony of white witnesses who knew the Indians and their traditions and heard their complaints about the Indians fishing on the ~~long~~^{many} side of the river ought to carry weight. They were testifying about general conditions in distinction from the individual visiting of Indians from one side to the other.

This testimony cannot be appreciated and weighed without reading. Much that is helpful in arriving at a just conclusion on this point is to be found on pages from 45 to 62 of our original Brief although the discussion of evidence there found is not all on this precise point. And further this question is discussed on pages 62 to 66 of our original Brief. It is to be borne in mind that the Bill of Complaint alleges Sam Williams is the most recent and consistent user of the point in question and the court below found that such place was not a usual and accustomed place of fishery by the Yakima Indians.

Many pages of the Record are taken up by evidence tending to support our contention. We cite only a few, all in Vol. 2 of Record. George Snipes 485, John Crate

545, Eld. Crate 484, Gulick 443, Leo Schanno 668, Rorick 486-498, Fred Smith 462, Charley Switzler 468, F. A. Seufert 498.

Here we leave a discussion of this evidence believing that it is unnecessary and think that such discussion avails little except to indicate in a forcible way that after the Indians have, in the most solemn manner executed a treaty and it has been duly ratified and proclaimed as a part of the supreme law of the land, that the extent of its application should not be determined by verbal testimony taken more than a half century after the negotiation of the treaty. The discussion emphasizes the fact that the provisions and boundaries contained in such treaties should be followed, and all this without any injustice to the Indians ceding territory, for by the very words of their treaty they have undertaken to convey all their right, title and interest in and to the country occupied and claimed by them and having so agreed they cannot be heard to say that they occupied or claimed country outside of the treaty boundaries.

VII.

BEFORE PASSING TO THE DISCUSSION OF OTHER POINTS, WE WISH TO ATTRACT THE COURT'S ATTENTION TO THE FACT THAT ALTHOUGH THE MIDDLE OREGON TRIBES FISHING RIGHTS WERE ALL RELINQUISHED IN 1865, EXCEPT THE RIGHTS ON THE RESERVATION, NO MENTION IS MADE OF THIS FACT BY THE WITNESSES. IT FOLLOWS THAT AFTER THAT DATE THE MIDDLE OREGON TRIBES HAD NO INDIAN FISHING RIGHTS AT ALL ALONG THE POINTS IN CONTROVERSY.

Some members of the Middle Oregon tribes fished, of course, along the Columbia after 1865. What they did was done because there was no objection, other than there would be to the fishing by a citizen and the Yakima visiting the Middle Oregon tribes when they were there fishing with them did so by permission. Neither had any treaty rights to fish on the Oregon shore of the Columbia and their usual places there, and fishing cannot be attributed properly to any treaty or claimed treaty rights.

VIII.

The theory announced, that fishing places were the subject of ownership as alleged in original and amended bill of complaint (see our original brief, page 58) was true and it was asserted in attempting to uphold the claim of Sam Williams, but when the case in his behalf failed it became necessary to contend that there was no such ownership but that the fishing was in common, and this is so because there was no ownership on the part of the Yakima Indians of any fishing place of the southern bank of the river by individuals or families, consequently the changed position on the part of the plaintiff followed.

IX.

IT HAS BEEN SUGGESTED THAT THE GOVERNMENT WILL CONTEND IN THIS CASE, THAT THE QUESTION OF TREATY INDIAN'S RIGHT TO USE MONOPOLISTIC DEVICES USED IN FISHING IS NOT INVOLVED IN THIS CASE. In order to establish the fact that the question

is fairly raised, we call the Court's attention to that part of the decree contained in paragraph 6, page 58, Vol. 1, of the Record wherein it is decreed that the Yakima Indians are not confined to their ancient and usual methods of catching fish but are permitted and are to be encouraged to adopt the more modern and advanced methods and means of prosecuting their fishing enterprises.

We also call attention to the following paragraph on the same page of the Record in which among other things the defendants are restrained from in any manner interfering, preventing or prohibiting said Indians from erecting, maintaining or using temporary houses or buildings upon the following described land, to-wit:

"That certain portion of the rocks of the Columbia River opposite said lots 2 and 3 for the purposes of shelter and occupation while fishing during the fishing season or for the purpose of securing fish during the said fishing season."

Said decree also prevents interference with the Indian's ingress and egress to and from said lands.

Lot 3 referred to is in Section 36, Township 2, North Range 13, East, W. M.

Lot 2 is in Section 1, Township 1, North of the same Range. Both are the undisputed property of the defendants.

From the foregoing it will be seen that the defendants are enjoined in effect from preventing the fishing on the part of the Indians by scow fish wheels fastened to the upland by means of iron pins or otherwise, said chains and fastenings necessarily being above the line of ordinary high water or from building of permanent fish wheels connected with the mainland.

Inasmuch as it is known from the evidence in this case that scow fish wheels can only be held in place by attachments of this kind the water being very swift, that the building of a permanent fishing wheel necessarily involves the attachment of the same to the upland.

It must be perfectly understood from this decree that Seufert Brothers Company would be considered in contempt if they interfered with any appliance placed upon their land that was necessary for the fastening of a scow fish wheel or with the connecting of a permanent fish wheel to the upland, and it is also perfectly well known that it would be necessary for anyone fishing with a monopolistic device so to do,—then why contend that the question is not raised. To be sure it is difficult to understand how that additional servitude could be incorporated into the treaty by construction, but that is a reason only for the reversal of this decree.

In this connection I wish to attract the attention of the Court to the fact that at the time of the ratification of this treaty Oregon Territory had been admitted into the Union as a State.

X.

WAS IT ERROR TO ALLOW THE PLAINTIFF TO FILE AN AMENDED COMPLAINT?

We respectfully submit that the cases cited by the plaintiff, at least so far as we are advised, do not support the contention made by the Government. In the case at bar we do not think that the particular shore covered by the decree is covered or described either in the original or amended bill because the actual point covered is definitely described in both as the point where the right of a fishery is alleged to exist, namely at a point twelve chains West and 28.53 chains North

of the $\frac{1}{4}$ Section Corner between Sections 36, Township 2, North Range 13 East W. M., and Lot 1, Township 1, North, same Range, Wasco County, Oregon. Said place is further identified as the usual place where Sam Williams, as a Yakima Indian was accustomed to fish and where this Indian has driven iron pins into the rocks to which to anchor his scow fish wheel to the south bank of the Columbia River and where the letter and figures O34 are marked upon the rocks, the same being the number of the fishing license issued to Sam Williams for the fishing season of 1913.

Record, Vol. 1, par. IV, pages 3 and 4.

The above is the only fishing place claimed in the original Bill of Complaint.

In the amended Bill of Complaint the fishing place claimed is precisely the same but in addition to claiming it for Sam Williams, a claim is also made for the Yakima Nation.

On page 24, Vol. 1 of Record is found the description of the point claimed in the amended bill and it is precisely the same as in the original bill—but in the amended bill the point is claimed for the benefit of the Yakima Nation of Indians and the most recent and consistent user Sam Williams. The only point claimed is the one of which Sam Williams is the most recent and consistent user and that point is found not to be a usual and accustomed place of fishery.

Further the amended bill does not state a cause of suit against Seufert Brothers as to the portion of the shore covered by the decree and it is not alleged in said amended bill that Seufert Brothers Company have in any way interefered with the Indians fishing along the

shore covered by the decree, or with any Indian except Sam Williams.

It is true that the original bill mentioned the United States as the Guardian of all Indians and Sam Williams in particular, but it no more included or contended for the right of the Yakima Indians in the original bill than it did for any other Indian tribes, but narrowed its contention to Sam Williams.

However, we do not wish to over emphasize a point which does not go to the merits and which we have no interest in except as the main controversy should by some possibility be decided against us.

XI.

Inasmuch as the Government has stated that upon further consideration it does not press its appeal and is content to rest upon the decree no further comment is made with reference to the cross appeal of the United States.

We conclude as in our original Brief and respectfully submit that we are entitled to a reversal.

Respectfully submitted,

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H. S. WILSON.

Attorneys for Appellants,
SEUFERT BROTHERS COMPANY.

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In the Supreme Court of the United States.

OCTOBER TERM, 1918.

No. 187.

SEUFERT BROTHERS COMPANY, APPELLANT,

v.

THE UNITED STATES OF AMERICA AS TRUSTEE AND
GUARDIAN OF THE CONFEDERATED TRIBES AND
BANDS OF THE YAKIMA NATION OF INDIANS
AND AS TRUSTEE AND GUARDIAN OF AND EX REL.
SAM WILLIAMS.

No. 188.

THE UNITED STATES OF AMERICA AS TRUSTEE AND
GUARDIAN OF THE CONFEDERATED TRIBES AND
BANDS OF THE YAKIMA NATION OF INDIANS
AND AS TRUSTEE AND GUARDIAN OF AND EX REL.
SAM WILLIAMS, APPELLANT.

v.

SEUFERT BROTHERS COMPANY.

*APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF OREGON.*

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is a suit brought by the United States, as guardian of the Indians named in its title, to restrain the defendant, an Oregon corporation, from inter-

fering with the right saved to those Indians by their treaty with the United States to fish at a certain place on the south shore of the Columbia River. The treaty was made June 9, 1855.¹ The relief sought was granted in part. (See 233 Fed. 579.) Both parties appeal. Upon further consideration, the United States does not press its appeal, but is content to rest upon the decree.

I.

THE FACTS.

On June 9, 1855, a treaty was negotiated between the United States and a group of Indian tribes which for the purposes in hand were considered a single people, the Yakima Nation. By it (2 Kappler's Indian Affairs, 524) there was ceded to the United States a vast extent of land. A specific tract was reserved for the exclusive occupancy of the Indians who acknowledged their dependence upon the United States. By Article III, it was said:

The exclusive right of taking fish in all the streams where running through or bordering said reservation is further secured to said confederated tribes and bands of Indians, as *also the right of taking fish at all usual and accustomed places, in common with the citizens of the territory, and of erecting temporary buildings for curing them.*

¹ This treaty was considered by this Court in connection with a fishing place on the north bank of the Columbia River in *United States v. Winans*, 198 U. S. 371. It is there referred to as the Treaty of 1859, the year of ratification.

The importance of fishing rights to Indian aborigines and especially to the tribes of the northwest is a familiar circumstance.

The bill as amended (R. 22-32) alleged that the Yakima Indians had been wont, from time immemorial, to fish at a usual and accustomed place on the south bank of the Columbia River about three miles above the City of The Dalles, described "in accordance with the government survey" as

that certain portion of the rocks which, at low water, constitute the south bank of the Columbia River opposite lot number 3, in section 36, township number 2, north of range 13, east of the Willamette meridian, in the County of Wasco, State of Oregon. (R. 24.)

The bill continues with a particular claim to a particular point within the *locus* so described, but the claim of a fishing ground is as to that "generally and particularly described." (R. 24.) This fishing ground is variously referred to in the record but usually by its Indian names of Wah-Sucks or Cum-Sucks or by their English equivalents, "Lone Pine," or "Lone Tree," etc. For convenience the fishing place will be referred to herein as "Lone Tree Point."

It was further alleged that the defendant had interfered with the right of the Yakima Indians to fish at Lone Tree Point and especially that it had prevented Sam Williams, a Yakima Indian, by various acts of interference from taking fish there, and more particularly at the point in the fishing place specifically de-

scribed in the bill. It alleged also that the defendant was appropriating said fishing place to itself by anchoring fish wheels and fish scows thereat with the effect of permanently excluding all other persons from the points so occupied (Cmp. *United States v. Winans*, 198 U. S. 371, 382), and by constructing and maintaining a wall upon the shore, with the result of interfering with fishing in the adjacent stream.

The prayers of the bill sought the establishment of the *locus* described as a usual and accustomed fishing place of the Yakima Nation within the meaning of the treaty of 1855, asked injunctions against the particular interference with Sam Williams referred to and concluded with a prayer for such other further and different relief as the nature of the cause might require and as to the Court might seem meet and just.

The answer admitted, *inter alia*, the building of the wall mentioned in the bill (R. 41) and the maintenance of a fish wheel about 750 feet above the spot on Lone Tree Point, particularly referred to in the bill (R. 45), as well as at that point (R. 41, 42). Ownership of lot number 3 in section 36, etc., the land along which the ancient fishing place was alleged to lie, was claimed for the defendant. In paragraph IV (R. 37) the answer specifically sets up the claim that the fishing rights along the Columbia secure to the Yakima Indians by the treaty were confined to the north bank thereof.

There was a trial at which the evidence of many witnesses was heard by the Judge. The record is not

entirely clear, but there are indications that what appears in the transcript while voluminous (pp. 69-671) is not all that was taken. The testimony was not only conflicting,¹ but from the nature of the issue it resulted that many of the witnesses, including those best qualified to testify to conditions as they were in 1855, were persons of advanced age. Among these was a large proportion of Indians testifying through an interpreter. Under such circumstances the familiar rule as to the weight to be given by an appellate court to the findings of fact made by the trial court has direct and compelling application.

The Judge found that Cum-Sucks or Lone Tree Point, on the south bank of the Columbia River, was a usual and accustomed fishing place of the Yakima Indians in 1855, and he made a decree (R. 56-59) enjoining the defendant from interfering with the use by said Indians, or any one or more of them, of said fishing place, from preventing the erection upon the adjacent rocks of temporary structures for use during the fishing season and from preventing access of said Indians to said fishing place. In the decree (par. II, R. 57) the limits of the fishing place as found to be established are defined. It is a part of the south shore or bank of the river opposite lot number 3 in section 36, township 2, etc., and in that respect conforms to the claim of the bill. The Judge found, however, that the evidence did not sufficiently

¹ See certificate of the District Judge, R. 671.

establish that the whole of the *locus* claimed in the bill was included in the ancient fishing place but found that the fishing place began at a point somewhat further up stream. The particular point mentioned in the bill with reference to Sam Williams' fishing was therefore not included. "The place where the evidence of this case shows Peter Jackson's scow fish wheel has heretofore been located" was specifically included. (R. 57.) It appears from the testimony of defendant's officers that Peter Jackson's scow fish wheel was so located under a license granted by the State to defendant and he "fished the place for" the defendant. (R. 636.)

The Government predicated its cross appeal in part upon the refusal of the District Judge to include the spot mentioned in connection with Sam Williams within the ancient fishing place. It is about 150 feet below the downstream boundary established by the Judge. (R. 571.) There was evidence that it was in fact within the fishing place as used by the Yakimas (R. 393, 418, 421, 429, 670), which at least warranted, if in view of all the circumstances and especially those affecting the difficulty of proof as to such a matter, it did not require such a finding. In view, however, of the rule mentioned as to the effect of the finding of the trial Court upon conflicting evidence the matter is not pressed upon the Court.

It is deemed unnecessary, for the same reason, to set out in detail the evidence which supports the Court's finding that Lone Tree Point within the limits defined by the decree was a place to which the

Yakima Indians were accustomed from time to time to resort to fish and to cure their catch. In the margin that evidence is summarized with references to the record.¹

As bearing upon the principal contention of the defendant, which is based upon the circumstance that the fishing place here in question is upon the south bank of the river, whereas the Yakima Indians are said to have principally resided north of the river and the river is set out in the treaty as a part of the boundary of the land ceded by them, the following matters of public record and judicial knowledge must be borne in mind. At the moment when this treaty was negotiated the United States was engaged also in negotiating like treaties with the other principal tribes of Indians in the Northwest with the intention

¹ It is undisputed that salmon run only at certain seasons and can only be caught at certain points and, as among these points, only when the water is at a proper stage at a particular point.

Many witnesses testified to the friendly relations, intermingling and intermarriage of the Indians north and south of the river. (Waters, R. 82; Handley, R. 128, 9; Pipeshire, R. 156; Tommy, R. 166; McNary, R. 183; McFarland, R. 224; Spencer, R. 236; Shea-Wa, R. 255, 6; Dick, R. 269; Seelatee, R. 328; Charley, R. 336; Whitcomb, R. 348; Thomas, R. 368; Wannassay, R. 379, 80; Jackson, R. 401.)

That the Indians on either side crossed the river to reach any fishing point which chanced to be available at a given time; that they knew no boundaries as regards fishing on the Columbia River; that the river was regarded as a common table free to all; that fishing places were freely shared; that the Yakimas fished on the south bank of the river as a matter of right and not of casual favor to individuals was also the testimony of many witnesses including in addition to aged Indians who had spent their lives fishing on the river a number of disinterested white settlers. (Waters, R. 84, 85; Handley, 129, 151; Simpson, 90, 93; Shea-Wa, R. 256, 264; Bruno R. 416; Laughlin, R. 96, 105; Jensen, R. 214, 219; Thomas, R. 370; Dick, R. 270, 274; Pipeshire, R. 155, 156; Smith, R. 319, 320; Wannassay, R. 379; Pa-Na-Wuck, R. 420; Kuck-Up, R. 434; Me-Nin-Ocht, R. 307; Wallulatum, R. 423, Holiquillo, R. 427.)

of extinguishing the Indian title to that whole territory and opening it to general settlement. For the purposes of the Government it was convenient and desirable that the treaties should be so phrased that the descriptions of the territory ceded by the various tribes should leave no interstices as to which later question could arise. For this and other reasons it was also desirable to deal with the various tribes, both as to cession of territory and as to the determination of their future places of settlement, in groups. The group boundaries were naturally therefore so delimited as to be contiguous. It was equally natural that they should follow but only in the most general way the rather vague ideas of the Indians as to claims of territorial dominion. The Yakimas abode for the most part north of the Columbia River. South of the river were the "Indians of middle Oregon" with whom as a group a similar treaty was negotiated about ten days after that now in question. (2 Kappler, 536.) Under such circumstances it was inevitable that the river should be taken as a convenient boundary of the respective cessions.¹ The matter of boundaries was of course of no interest to the Indians, who were agreeing thenceforth to live upon reservations not affected by them. But the matter of the fishing rights was one of vital concern, as was the availability of both banks of the Columbia River for fishing. Whatever they may

¹ A like treaty was made, also on June 9, 1855, with the Walla Walla Indians and associated tribes. The same practice of making the boundaries exact and contiguous was followed. (2 Kappler, 521.) A complete list of this set of treaties appears in a note on p. 17 *post*.

have thought and however little they may have cared about the matter of territorial dominion, they did know, as one of the Indian witnesses put it, that the river was a common table for both, both sides of the river. It lay right in between them and they came and ate and were gone. (Shea-Wa, R. 256.)¹

And the District Judge found (R. 52, 53), upon abundant testimony (R. 106, 107, 194, 195, 211, 233, 240, 271, 368, 369, 374, 375, 379, 401, 256, 264, 129, 307, 423, 427, 90, 82, 84, 85, 416, 96, 105, 214, 219), that the Indians upon either side of the river were accustomed in every sense of the word to cross it from time to time for the purpose of taking fish as the fishing varied because of the season or other conditions without any thought of territorial division between the tribes as to rights in the river itself.

It may be remarked that the statements in appellant's brief (pp. 20-22) which apparently suggest the inference that negation of Yakima fishing rights upon the south bank of the Columbia was a matter of general consent in the Northwest, if material, do not appear to be supported by counsel by any references to the testimony herein. Attention also is called to the first paragraph of page 6 of

¹ The testimony of this witness is much too long to set out in full (R. 254-268) but it is picturesque, interesting and illuminating. In the main it has been deemed best to refrain from quoting from the testimony of these Indian witnesses, because quotations from such testimony taken with an interpreter if read without the whole context may easily be misleading. Only the trial Judge who heard it all, with the witnesses before him, could fairly determine its weight.

appellant's brief. While probably not so intended, the phrasing of the sentence and the use of italics might lead to the inference that in the treaty of 1865 with the Wascos a right saved to them in their treaty of 1855 to fish "*on their side of the river*" (I quote a part of italicised language) was surrendered and extinguished. What was surrendered and extinguished was the right to fish in the river at all. There is no mention of sides of the river in either treaty. (2 Kappler, 536, 693.) This fact is also to be borne in mind in appraising the argument made by appellant later in its brief (pp. 41-43).

Certain facts about Sam Williams, who is mentioned in the title of the bill and in the decree (Par. V, R. 58), remain to be stated. The bill was brought originally by the United States as guardian of all Indian wards of the United States *ex relatione* of Sam Williams. It is alleged that Sam was a full-blood Indian, a member of the Yakima Nation and as such an allottee of lands within that reservation and a ward of the United States. The bill was thereafter amended so that the United States brought the suit as guardian of the tribes known as the Yakima Nation, as well as all the individual members thereof to protect said Indians in the treaty right already described "and particularly to protect the rights and privileges of Sam Williams as a member of said Yakima Nation."

The Court granted relief to the United States as guardian of the Yakima Nation and enjoined defendant from interfering with them "or any one of them"

in the exercise of their fishing rights. (R. 58.) As to Sam Williams, however, it was said, in paragraph V of the decree that he is not a ward of the United States Government in the sense that the Government is required to and should interpose in his behalf to protect his rights, if any, to the privilege of fishing at the location named herein. (R. 58.)

It will be observed that the Court did not find that Sam Williams was not a Yakima Indian, nor did it find that he did not have a right in common with other Yakima Indians to fish at the *locus* in question.

Whether or not the Judge was correct in ruling upon the facts set out in the opinion (R. 53) that Williams had ceased to be a ward of the United States in the sense that the United States could not bring this suit to protect his rights under the treaty of 1855 was sought to be raised by the cross appeal of the United States. The question, however, does not seem material, in view of the fact that the decree does not adjudicate the question whether Sam is a Yakima Indian, and the further fact that the United States prevailed as guardian of Yakima Indians generally.

II.

THE CONTENTIONS OF THE PARTIES.

The principal contention of the appellant in this Court (Appt's. Brf. pp. 1, 2) is based upon the circumstance that the decree establishes in the Yakima Indians fishing rights at a place upon the south bank of the Columbia River, whereas that river was itself in

part the southern boundary of the territory expressed in the treaty of 1855 to have been ceded by these Indians. It is said that the language of Article III of the treaty by which the right is saved to the Indians to take fish at "all usual and accustomed places" must refer only to such places within the territory ceded and that, therefore, a place upon the south bank of the river can not be construed to be within the intendment of the treaty, whatever may have been the actual facts as to its use by the Indians.

To this the United States replies that the natural and ordinary meaning of the words used imports the inclusion of all places at which the Yakima Indians were in fact used and accustomed to fish; and that such a construction is reinforced and made inevitable when the rules laid down by this Court for the interpretation of Indian treaties are applied in the light of the attendant circumstances.

The remaining contentions of the appellant are best stated by quoting the questions as to which it says the judgment of the Court is sought. These are set out on page 10 of its brief. They are:

Second. Could the Court, over the objection of the defendant permit an amendment virtually substituting the Yakima Tribe of Indians in the place of Sam Williams as a plaintiff, and involving entirely different rights and issues?

Third. Could the Court after finding that the place claimed by Williams and described in both the original and amended complaint had

never been used by the Yakima Indians as a fishing place, proceed to enter a decree as to other places never in issue at all.

Fourth. Could the Indians (if they had any right to fish on the Oregon side at all) abandon their simple methods at the time of the treaty and assert a treaty right to fish with exclusive and monopolistic contrivances, like permanent fish wheels in front of white man's premises.

To the first of the contentions last mentioned, it is answered that the bill as amended raised no different issues from those presented by it as originally drawn and that, apart from this, there was no error in allowing the amendment.

To the second it answers that the *locus* included in the decree while less extensive than that claimed in the bill was nevertheless clearly put into issue and that in any event there was no error in the Court's action.

To the third the United States replies that no such question is raised by the decree appealed from. All that is said is that the Indians are not confined to their ancient methods of fishing. (R. 58.) It is clearly pointed out by the opinion that the manner in which the Indians are to exercise their established rights, in common with citizens of the United States, was not before the Court but could be dealt with when it arises. (R. 55, 56.)

The assignment of errors raises certain other points but it is assumed from their omission from defendant's statement of the questions raised and

from its brief that they are not pressed. While appellant's brief (pp. 62-66) contains a short discussion under the heading, "Did Yakima Indians Ever Fish at the Point in Question?" that discussion is opened with the admission that there was a great deal of conflicting testimony on the point. It consists principally of counsel's opinion as to the value of Indian testimony, based in part on some isolated excerpts from the testimony of three of the witnesses. No assignment of error predicated upon the Judge's finding that the Yakima Indians did in fact make a practice of fishing at Lone Tree Point appears to be urged upon the Court.

III.

THE ISSUES.

The issues upon which the determination of the Court appears therefore to be required are

1. Was it competent for the Court to establish as a usual and accustomed fishing place under the treaty of 1855 a fishing place upon the south shore of the Columbia River?

2. In view of the technical history of the case was any error committed

- (a) In permitting the amendment to the bill and in granting relief thereupon?

- (b) In establishing the *locus* described in the decree as a usual and accustomed fishing place of the Yakima Indians?

- (c) In making a part of the decree a remark that in exercising their rights under the treaty, the Yakima Indians were not confined to aboriginal methods of fishing?

ARGUMENT.**I.**

A fishing place upon the south bank of the Columbia River to which the Yakima Indians were in fact accustomed to resort is a usual and accustomed fishing place within the meaning of the treaty of 1855.

The District Judge found that the Yakima Indians, at the time of the treaty, were used to visit what is herein called Lone Tree Point, on the south bank of the Columbia River, for the purpose of fishing. This finding is admitted by appellant to have been supported by a "great amount of evidence" (App't's Brf., p. 62). To this evidence reference has already been made. The propriety of the finding of fact does not seem to be seriously challenged by the appellant. But it is vigorously contended that the Judge was wrong in ruling that this point was a "usual and accustomed place" within the meaning of the language of the treaty. It is said that the words, as used in the treaty, refer only to places within the territory described as ceded to the United States, and that the place in question is not within that territory since it is on the south bank of the river and the river itself is named as in part the southern boundary of the cession.

The question presented is of course one of construction. It is whether the words "all usual and

accustomed places" really mean all places to which the Indians were used and accustomed to resort or whether they mean something less. That they mean what they appear to say is their natural and ordinary construction. No language limiting them geographically appears in the treaty. If they are to be construed to include fishing places on the *north* bank of the Columbia River (*United States v. Winans*, 198 U. S. 371) but not places, however usual and accustomed in fact, on the *south* bank thereof, the limitation must be found in something outside the language of Article III.

When, for the purpose of examining this contention, one turns from the words used to their context and to the circumstances under which the treaty was made, one begins with the fact that it was a treaty with the Indians. The words of such a treaty are to be construed "in the sense in which they would naturally be understood by the Indians." (*Jones v. Meehan*, 175 U. S. 1, 11.) They "should never be construed to their prejudice" (*Worcester v. Georgia*, 6 Pet. 515, 582). In the *Winans* case, *supra*, the rule of construction was summed up by Mr. Justice McKenna. He said (at page 380)—

We will construe a treaty with the Indians as "that unlettered people" understood it, and "as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection," and counterpoise the inequality "by the

superior justice which looks only to the substance of the right and without regard to technical rules."

The language here to be construed related to a right "not much less necessary to the existence of the Indians than the atmosphere they breathed." (*United States v. Winans, supra*, at 381.) It remains, then, to inquire what, in the light of the circumstances, the Indians must have understood by the words in question and to ask whether there is anything which requires this Court to exclude from the comprehension of "all usual and accustomed places" a usual and accustomed place upon the south bank of the Columbia River.

This treaty was one of a group which were negotiated practically simultaneously with the view of extinguishing the Indian title to all this north-western corner of the United States.¹ For that purpose it was desirable that the boundaries of the cessions be so accommodated that no interstices should be left as to which later question could arise. It was desired, as the District Judge notices (R. 50), to conclude the operation "within a comparatively short compass of time," and it was so accomplished. The

¹ Treaty with the Yakima, June 9, 1855 (2 Kappler's Indian Affairs, 524); With the Nisqualli, Puyallup, etc., Dec. 26, 1854 (Ibid., 495); With the Calapooias, etc., Jan. 22, 1855 (Ibid., 498); With the Dwamish, Suquamish, etc., Jan. 22, 1855 (Ibid., 531); With the S'Klallam, etc., Jan. 26, 1855 (Ibid., 504); With the Makah, etc., Jan. 31, 1855 (Ibid., 510); With the Walla Walla, etc., June 9, 1855 (Ibid., 521); With the Nez Perces, June 11, 1855 (Ibid., 528); With the Tribes of Middle Oregon, June 25, 1855 (Ibid., 536); With the Quinaielt, etc., July 1, 1855 (Ibid., 539); With the Flathead Nation, July 16, 1855 (Ibid., 542), etc.

exactness of the definitions of the boundaries, so long as they were made contiguous, was not very important even to the United States. It was of no consequence to the Indians who were agreeing to give up their claim to a vast territory and to concentrate their settlement upon a smaller area unaffected by the boundaries in question. But the matter of fishing rights was a circumstance of the greatest importance to them. They knew that they were accustomed freely to resort to both banks of the Columbia River as to "a common table" in which they shared rights with other tribes, as has already been pointed out. They were told that the right so to resort to "all usual and accustomed places" was saved to them.

The proposition that under these circumstances they understood the words "all usual and accustomed places" to be subject to such limitations growing out of the common law with respect to conveyances of real estate that they included usual and accustomed places on the north bank of the river and did not include equally usual and accustomed places upon the south bank is to ask too much of the unlettered understanding of the Indians.

In *United States v. Winans, supra*, the right of the Indians to fish at usual and accustomed places upon the north bank of the river was in question and was established, but no question arose as to fishing places on the south bank. It is worthy of note that the interference there complained of in part consisted in the placing by defendants in front of their lands fishing wheels which resulted in the exclusive occupation

by defendants of the space so occupied. (198 U. S. 371, 382.) The appellant here lays a good deal of stress upon certain language in the opinion of this Court which is said to show that the fishing rights referred to in Article III of this treaty exist only in so far as they can be said to result from reservations as to the land granted. From which it is argued that there can not be such rights as to places not within the territorial limits adopted for describing the cession by the Indians. The reservation is, however, as is clearly shown by the opinion, not to be read with the strictness which might be observed in construing a grant of land between individuals of equal capacity. And it was a reservation of existing rights, one of which was to fish in the Columbia River. The Yakimas had and exercised as undoubted a right to fish at all usual and accustomed places in that river as to occupy any of the land which they were supposed to occupy, and this right was reserved without reference to any other consideration.

If indeed the matter is to be dealt with only with regard to the limits of the cession these limits themselves must be read as the Indians must have understood them. The limit so expressed is "the Columbia River," and not the north bank or the middle of the channel thereof. To the Indians, no reason for distinguishing between the two banks of the river, to which alike they had been accustomed to resort, could have occurred. In the language of the District Judge, "so it is that the Columbia River as a bound-

ary may not mean as much to them as to the mind of the superior white man." (R. 51.)

If the natural meaning of the words "all usual and accustomed places" is to be so limited as to exclude some "usual and accustomed places," the intention so to limit them must be shown to have been so expressed as to clearly convey to the Indian mind the fact of such limitation. There is not a single word in the treaty which could even have been calculated to convey such an impression.

It is indeed suggested by appellant (Brf., p. 29) that the words "in common with the citizens of the Territory" lend support to a construction of the language as referring only to places within the particular territory ceded. The apparent result would be to exclude from such fishing places persons not Yakima Indians and not citizens of what then was Washington Territory. A far more reasonable and natural construction is that of the District Judge, who refers to the contemporaneous treaties previously mentioned and to the language used in them for making a similar reservation and concludes that the words were intended to mean "citizens of the United States" and no more. (R. 51.) Apart from the question whether, when the treaty is properly read, the Columbia River is not to be taken as within the territorial limits of the cession, the construction of the District Court has also the support of the rule that "the language used in treaties with the Indians should never be construed to their prejudice."

Worcester v. Georgia, 6 Pet. 515, 582.

The matter was well stated by the District Judge and attention is respectfully directed to his discussion of it. (R. 49-52.) His conclusion that the treaty must be so construed as to include within the rights reserved the right to fish at the usual and accustomed fishing places of the Yakimas on the south bank of the Columbia River is clearly correct.

II.

No error was committed by the District Court in allowing the amendment to the bill and its granting relief thereupon.

While this point is included by appellant among the questions which it says are submitted to the Court on its appeal (Appt.'s Bf., p. 10), the only reference to it other than its mere statement appears to be a passing remark on page 7. Comparison of the amended bill with that originally filed will show that the change is merely in that the original bill was brought by the United States "as trustee and guardian of all Indian wards of the United States ex rel. Sam Williams," and the amended bill was brought as guardian of the Yakima nation as well, as of the individual members thereof, as trustee of the allotted lands of said Indians and as guardian and trustee of all the rights and privileges reserved to said Yakima Indians by the treaty of June 9, 1855. The fishing rights sought to be established and the places at which they are claimed are exactly the same.

The defendant was put to no disadvantage and was not prejudiced or taken in any way by surprise as a result of allowing the amendment.¹ Under these circumstances an appellate Court will not review the action of the trial Court in allowing an amendment even at a very late stage of the case. *Richmond v. Irons*, 121 U. S. 27, 46; *United States v. Lehigh Valley R. R. Co.*, 220 U. S. 257.

In fact, where an action is brought by the United States to protect the property rights of Indians the United States is the real party and the Indians are neither necessary parties nor can they exercise any control over the litigation although they are bound by the decree. *Heckman v. United States*, 224 U. S. 413, 444, 446. The amendment in question was in fact immaterial.

III.

The District Court was justified under the pleadings and proof in finding the fishing place to be at the location described in the decree.

Paragraph V of the amended bill (R. 24) alleges the existence of a fishing place of the Yakima Indians, described "in accordance with the Government survey" as "that certain portion of the rocks which, at

¹ While the record does not clearly show at what stage of the case or under what circumstances the amendment was made, it appears that after a motion to dismiss the amended bill was overruled, on July 12, 1915, an answer thereto was filed on July 21. (R. 35.) The hearing on the merits seems to have come on in January, 1916 (R. 143, 167, etc.), and the defendant was putting in evidence in chief on Jan. 31 and Feb. 1, 1916. (R. 559, 600.)

low water, constitute the south bank of the Columbia River, opposite lot No. 3, in section 36, township No. 2 north, of range 13 east of the Willamette Meridian, in the County of Wasco, State of Oregon." It alleges further that the fishing place "as in this paragraph generally and particularly described, was, at the time of said treaty, always has been, and now is one of the usual and accustomed" fishing places of the Yakima Indians. Each of these allegations is specifically denied in paragraph V of the answer (R. 37).

The bill prays (R. 31) for a decree "establishing that the fishing place described in paragraph V herein is one of the usual and accustomed fishing places" of the Yakima Indians.

The decree (R. 57) establishes as an Indian fishing place a large part of the south shore of the Columbia River opposite said lot 3, excluding therefrom, however, a particular point at which Sam Williams claimed the right to fish.

Since the pleadings clearly tender the issue whether any portion of the shore of the Columbia River opposite lot No. 3, etc., is or ever was a usual and accustomed fishing place of the Yakimas, the court did not go outside the pleadings and prayer of the complaint in the finding and decree.

Even if there was ambiguity in the pleadings as to the claim of the Government in regard to the south bank of the Columbia River opposite lot No. 3 as an Indian fishing ground, the appellant can not now

predicate error upon the provision of the decree now under consideration. As has been shown it rested upon abundant proof. The witnesses who testified for the Government that Lone Tree Point was a usual and accustomed fishing place did not confine themselves to the particular place on that point at which Sam Williams was seeking to have his wheel located, nor did the defendant's witnesses. All the evidence went into the record without objection. If there were a variance between the pleadings and the proof it is clear that the appellant was not surprised or prejudiced thereby. It was well understood that one of the issues in the case was whether the entire point or any part of it, or, indeed, any point on the south bank of the river, was and always had been a usual and accustomed fishing place of the Yakima Indians.

As there is enough in the bill as amended to warrant relief, and as the defendant could not have been taken by surprise, we do not think the decree should be reversed on the ground that the allegata and the probata do not sufficiently agree to justify it. (*Moore v. Crawford*, 130 U. S. 122, 142.)

IV.

The decree is not in error on the ground that it permits the Indians to fish with fish wheels or other monopolistic devices.

It is true that the decree provides (Par. VI, R. 58) that the Indians were not confined to their ancient and usual methods of catching fish, but were per-

mitted and to be encouraged to adopt the more modern methods and means of prosecuting their fishing enterprises; but it also provides (Par. III, R. 57) that the fishing privileges of the Indians are to be exercised in common with the citizens of the United States. That the court did not intend to permit the Indians any monopoly is shown by the following quotation from the opinion:

The rights here ascertained and determined, it must be understood, are to be exercised in common with citizens of the United States, as the treaty so provides. How the common privilege is to be exercised is a subject with which we are not now concerned. When the subject arises, there will be found, it is hoped, a way of satisfactory adjustment (R. 55).

These remarks may be compared with what was said as to a very similar question in the *Winans* case, *supra*, in which this court referred the matter of working out such an accommodation to the trial court (198 U. S. 371, 384).

No error was made by the District Court in this part of its decree.

CONCLUSION.

The only substantial question presented by the defendant's appeal is whether there was warrant of law for a ruling that a usual and accustomed

fishing place under the treaty of 1855 might be found to exist on the south bank of the Columbia River. There is such warrant and the decree appealed from should be affirmed.

LARUE BROWN,
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LEONARD ZEISLER,
Attorney.

JANUARY, 1919.



SEUFERT BROTHERS COMPANY *v.* UNITED STATES, AS TRUSTEE AND GUARDIAN OF THE CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIANS AND NATIONS, ET AL.

UNITED STATES, AS TRUSTEE AND GUARDIAN OF THE CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIANS AND NATIONS, ET AL. *v.* SEUFERT BROTHERS COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON.

Nos. 187, 188. Argued January 29, 30, 1919.—Decided March 3, 1919.

The right secured to the Yakima Indians, through their treaty of June 9, 1855, Art. III, 12 Stat. 25, of taking fish at all usual and accustomed places, in common with citizens of the United States, and of erecting temporary buildings for curing them, extends to places in Oregon on the south side of the Columbia River, where these Indians habitually fished before and since the treaty, even though beyond the limits of the Yakima cession and within the region covered by the similar provision in favor of the Walla-Walla and Wasco tribes. (12 Stat. 37.) P. 196.

This provision is not to be construed technically and strictly as an exception from the general cession made by the Yakimas of lands north of the river, but must be given effect in accordance with the broad terms used, as understood by the Indians. P. 198.

233 Fed. Rep. 579, affirmed.

The case is stated in the opinion.

Mr. H. S. Wilson, with whom *Mr. A. S. Bennett* was on the briefs, for Seufert Brothers Co.

Mr. Assistant Attorney General Brown, with whom *Mr. Leonard Zeisler* was on the brief, for the United States, as trustee, etc., *et al.*

MR. JUSTICE CLARKE delivered the opinion of the court.

As trustee and guardian of the Yakima Indians, the Government of the United States instituted this suit in the Federal District Court for the District of Oregon to restrain defendant, a corporation, its officers, agents and employees, from interfering with the fishing rights in a described locality on the south side and bank of the Columbia River, which it was alleged were secured to the Indians by Article III of the treaty between them and the United States, concluded June 9, 1855, and ratified by the Senate on March 8, 1859 (12 Stat. 25).

The District Court granted in part the relief prayed for and found as follows: That the "following described portion of the south bank of the Columbia river in the county of Wasco, state and district of Oregon, was at the time of the treaty, always has been, and now is, one of the usual and accustomed fishing places belonging to and possessed by the Confederated Tribes and Bands of Indians known as the Yakima Nation." And the court further decreed that the rights and privileges to fish in common with citizens of the United States reserved by said Yakima Nation and guaranteed by the United States to it in the treaty of June 9, 1855, applied to all the usual and accustomed fishing places on the south bank or shore of the Columbia River, in the decree described.

An appeal from the decree granting an injunction brings the case here for review.

As stated by counsel for the appellant the most important question in the case is this, "Did the treaty with the Yakima tribes of Indians, ceding to the United States the lands occupied by them, on the north side of the Columbia River in the Territory of Washington," and reserving to the Indians "the right of taking fish at all usual and accustomed places, in common with citizens of the Territory" give them the right to fish in the country of another

tribe on the south or Oregon side of the river? The appeal requires the construction of the language quoted in this question, and the circumstances incident to the making of the treaty are important.

Fourteen tribes or bands of confederated Indians, which, for the purposes of the treaty were considered as one nation under the name of Yakima Nation, at the time of the making of the treaty occupied an extensive area in the Territory, now State, of Washington, which is described in the treaty, and was bounded on the south by the Columbia River. By this treaty the Government secured the relinquishment by the Indians of all their rights in an extensive region, and in consideration therefor a described part of the lands claimed by them was set apart for their exclusive use and benefit as an Indian reservation, and in addition fishing privileges were reserved to them by the following provision in Article III:

"The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, *as also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory, and of erecting temporary buildings for curing them.*"

This treaty was one of a group of eleven treaties negotiated with the Indian tribes of the northwest between December 26, 1854, and July 16, 1855, inclusive. Six of these were concluded between June 9th and July 16th, inclusive, and one of these last, dated June 25th, was with the Walla-Walla and Wasco tribes, "residing in Middle Oregon," and occupying a large area, bounded on the north by that part of the Columbia River in which the fishing places in controversy are located (12 Stat. 37). This treaty contains a provision for an Indian reservation and one saving fishing rights very similar in its terms to that of the Yakima treaty, viz: "That the exclusive right of taking fish in the streams running through and

bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, in common with citizens of the United States, and of erecting suitable houses for curing the same."

These treaties were negotiated in a group for the purpose of freeing a great territory from Indian claims, preparatory to opening it to settlers, and it is obvious that with the treaty with the tribes inhabiting Middle Oregon in effect, the United States was in a position to fulfill any agreement which it might make to secure fishing rights in, or on either bank of, the Columbia River in the part of it now under consideration,—and the treaty was with the Government, not with Indians, former occupants of relinquished lands.

The District Court found, on what was sufficient evidence, that the Indians living on each side of the river, ever since the treaty was negotiated, had been accustomed to cross to the other side to fish, that the members of the tribes associated freely and intermarried, and that neither claimed exclusive control of the fishing places on either side of the river or the necessary use of the river banks, but used both in common. One Indian witness, says the court, "likened the river to a great table where all the Indians came to partake."

The record also shows with sufficient certainty, having regard to the character of evidence which must necessarily be relied upon in such a case, that the members of the tribes designated in the treaty as Yakima Indians, and also Indians from the south side of the river, were accustomed to resort habitually to the locations described in the decree for the purposes of fishing at the time the treaty was entered into, and that they continued to do so to the time of the taking of the evidence in the case, and also that Indians from both sides of the river built houses upon the south bank in which to dry and cure their fish during the fishing season.

This recital of the facts and circumstances of the case renders it unnecessary to add much to what was said by this court in *United States v. Winans*, 198 U. S. 371, in which this same provision of this treaty was considered and construed. The right claimed by the Indians in that case was to fishing privileges on the north part and bank of the Columbia River—in this case similar rights are claimed on the south part and bank of the river.

The difference upon which the appellant relies to distinguish this from the former case is that the lands of the Yakima Indians were all to the north of the river and therefore it is said that their rights could not extend beyond the middle of that stream, and also that since the proviso we are considering is in the nature of an exception from the general grant of the treaty, whatever rights it saves must be reserved out of the thing granted, and as all of the lands of the Yakima tribes lay to the north of the river it cannot give any rights on the south bank.

But in the former case (*United States v. Winans, supra*), the principle to be applied in the construction of this treaty was given this statement:

"We will construe a treaty with the Indians as 'that unlettered people' understood it, and 'as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection,' and counterpoise the inequality 'by the superior justice which looks only to the substance of the right without regard to technical rules.' 119 U. S. 1; 175 U. S. 1."

How the Indians understood this proviso we are considering is not doubtful. During all the years since the treaty was signed they have been accustomed habitually to resort for fishing to the places to which the decree of the lower court applies, and they have shared such places with Indians of other tribes from the south side of the river and with white men. This shows clearly that their understanding of the treaty was that they had the right

to resort to these fishing grounds and make use of them in common with other citizens of the United States,—and this is the extent of the right that is secured to them by the decree we are asked to revise.

To restrain the Yakima Indians to fishing on the north side and shore of the river would greatly restrict the comprehensive language of the treaty, which gives them the right “of taking fish at all usual and accustomed places, . . . and of erecting temporary buildings for curing them,” and would substitute for the natural meaning of the expression used,—for the meaning which it is proved the Indians, for more than fifty years derived from it,—the artificial meaning which might be given to it by the law and by lawyers.

The suggestion, so impressively urged, that this construction “imposes a servitude upon the Oregon soil” is not alarming from the point of view of the public, and private owners not only had notice of these Indian customary rights by the reservation of them in the treaty, but the “servitude” is one existing only where there was an habitual and customary use of the premises, which must have been so open and notorious during a considerable portion of each year, that any person, not negligently or wilfully blind to the conditions of the property he was purchasing, must have known of them.

The only other questions argued by the appellant relate to the claims which counsel anticipated would be made on the cross-appeal by the Government, which, however, was abandoned before oral argument and must be dismissed. It results that the decree of the District Court must be

Affirmed.